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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

GREE, INC.,	) (	CIVIL ACTION NOS.
	) (	2:19-CV-70-JRG-RSP
PLAINTIFFS,	) (	2:19-CV-71-JRG-RSP
	) (	
VS.	) (	
	) (	MARSHALL, TEXAS
SUPERCELL OY,	) (	SEPTEMBER 16, 2020
	) (	8:44 A.M.
DEFENDANTS.	) (	

TRANSCRIPT OF JURY TRIAL  
VOLUME 9 - MORNING SESSION  
BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP  
UNITED STATES CHIEF DISTRICT JUDGE

APPEARANCES:

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19 Official Court Reporter  
20 United States District Court  
21 Eastern District of Texas  
22 Marshall Division  
23 100 E. Houston  
24 Marshall, Texas 75670  
25 (903) 923-7464

(Proceedings recorded by mechanical stenography, transcript  
produced on a CAT system.)

P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

Are the parties prepared to read into the record those items from the list of pre-admitted exhibits used during yesterday's portion of the trial?

MR. MOORE: Yes, Your Honor, we are.

THE COURT: Please proceed.

MS. PFINGST: May I proceed, Your Honor?

THE COURT: Please do.

MS. PFINGST: Thank you.

PTX-68, PTX-73, PTX-129, PTX-458, PTX-606. Thank you.

THE COURT: All right. Is there any objection to that rendition?

MR. DACUS: No objection, Your Honor.

THE COURT: Do Defendants have a similar rendition to offer into the record?

MR. DACUS: Yes, we do, Your Honor. Thank you.

THE COURT: Please proceed.

MR. MCMICHAEL: Good morning, Your Honor.

Defendant's Exhibits are DX-27A, DX-27B, DX-29A, DX-29B, DX-51, DX-198, DX-498, DX-514, DX-519, DX-531, DX-532, DX-533, DX-540, DX-566, DX-570, DX-588, DX-620,

08:45:33 1 DX-636, DX-649, DX-652, DX-666, DX-698, DX-705, DX-706,  
08:45:46 2 DX-708, DX-938, DX-943, DX-945, DX-947, DX-949, DX-957,  
08:46:01 3 DX-1018, DX-1030, DX-1044, DX-1053, DX-1054, DX-1076.1348,  
08:46:13 4 DX-1076.1362, DX-1076.1732 to 1733, and DX-1076.1738,  
08:46:31 5 DX-1197, PTX-3, PTX-4, PTX-5, PTX-33, PTX-68, PTX-140,  
08:46:41 6 PTX-150, PTX-159, PTX-172, PTX-173, PTX-174, PTX-446,  
08:46:53 7 PTX-598, and PTX-601.

08:46:56 8 THE COURT: All right. Thank you for that  
08:46:59 9 rendition.

08:47:00 10 Does Plaintiff have any objection to the same?

08:47:03 11 MR. MOORE: No, Your Honor, no objection.

08:47:05 12 THE COURT: All right. Counsel, are you aware of  
08:47:10 13 anything we should take up before I bring in the jury and  
08:47:14 14 proceed with the Defendant's case-in-chief?

08:47:16 15 MR. MOORE: Nothing from Plaintiff, Your Honor.

08:47:19 16 MR. DACUS: Nothing from Defendant.

08:47:21 17 THE COURT: Let's bring in the jury,  
08:47:24 18 Mr. Fitzpatrick.

08:47:29 19 COURT SECURITY OFFICER: Yes, Your Honor.

08:47:30 20 All rise.

08:47:33 21 (Jury in.)

08:47:40 22 THE COURT: Good morning and welcome back, ladies  
08:47:49 23 and gentlemen. Please have a seat.

08:47:50 24 We'll proceed with the Defendant's case-in-chief.

08:47:56 25 Defendant, call your next witness.

08:47:58 1 MR. DACUS: Thank you, Your Honor. Supercell  
08:48:00 2 calls Robert Klein. Mr. Klein is Supercell's survey  
08:48:04 3 expert, and we call him by video trial deposition,  
08:48:07 4 Your Honor.

08:48:07 5 THE COURT: Proceed with the witness by  
08:48:08 6 deposition.

08:48:09 7 MR. DACUS: Thank you.

08:48:10 8 (Videoclip played.)

08:48:10 9 QUESTION: Good afternoon, Mr. Klein. Would you  
08:48:23 10 please state your name for the jury.

08:48:25 11 ANSWER: Yes, Robert Klein, K-l-e-i-n.

08:48:30 12 QUESTION: Mr. Klein, were you retained by  
08:48:32 13 Supercell in this case.

08:48:33 14 ANSWER: Yes, I was.

08:48:34 15 QUESTION: What were you retained to do.

08:48:36 16 ANSWER: I was retained to do two things. First,  
08:48:38 17 to review Dr. Neal's survey and report and determine  
08:48:43 18 whether it could be used as a basis for calculating  
08:48:47 19 damages.

08:48:47 20 And, secondly, to conduct surveys of my own. I  
08:48:51 21 conducted three surveys, directed at the specific features  
08:48:56 22 that are accused in the three separate games.

08:48:58 23 QUESTION: Thank you, Mr. Klein.

08:49:01 24 I'd like to start discussing your educational  
08:49:03 25 background.

08:49:04 1 Could you please summarize that for us?

08:49:07 2 ANSWER: Sure. I have an undergraduate degree,  
08:49:11 3 Bachelor of Science degree from MIT in mechanical  
08:49:16 4 engineering in 1966 and a Master of Science degree in  
08:49:20 5 management from the MIT Sloan School of Management in 1968.

08:49:24 6 QUESTION: And, Mr. Klein, I'd like to next turn  
08:49:32 7 to your professional history. Could you please summarize  
08:49:34 8 that for us.

08:49:35 9 ANSWER: Sure. After graduating from MIT, I spent  
08:49:37 10 two years as a commissioned officer in the U.S. Public  
08:49:42 11 Health Service, stationed at the National Institutes of  
08:49:45 12 Health in Bethesda, Maryland, in the division of computer  
08:49:52 13 research and technology.

08:49:53 14 In 1970, I returned to Boston to join two of my  
08:49:57 15 former professors and started Management Decision Systems,  
08:50:02 16 a market research, marketing consulting company. Over the  
08:50:07 17 15 -- next 15 years, Management Decision Systems grew to  
08:50:13 18 about 250 employees with offices throughout the U.S., as  
08:50:16 19 well as in Europe and Asia.

08:50:19 20 In 1985, Management Decision Systems was acquired  
08:50:23 21 by Information Resources, which was then the fourth largest  
08:50:28 22 market research company in the world. I became executive  
08:50:32 23 vice president of Information Resources.

08:50:34 24 I left then in 1989 to start Applied Marketing  
08:50:39 25 Science, working with another MIT professor. And so for

08:50:47 1 the last 31, now, years, we've been applying market  
08:50:52 2 research techniques to issues of understanding customer  
08:50:56 3 wants and needs, as well as supporting litigation.

08:51:02 4 QUESTION: Have you conducted consumer surveys.

08:51:05 5 ANSWER: Yes, I have. I've conducted over a  
08:51:08 6 thousand consumer surveys, primarily for commercial  
08:51:12 7 clients, not for litigation.

08:51:13 8 QUESTION: Have you ever conducted a survey for  
08:51:15 9 litigation.

08:51:15 10 ANSWER: Yes, I've conducted approximately 200  
08:51:19 11 surveys for use in litigation.

08:51:24 12 QUESTION: When did you conduct your first  
08:51:26 13 consumer survey.

08:51:27 14 ANSWER: The first survey I conducted was in 1971  
08:51:31 15 where we were predicting how successful new products would  
08:51:37 16 be before they came onto the market. And it was a process  
08:51:40 17 that involved interviewing people in shopping malls and --  
08:51:43 18 and then telephone interviews, following them up.

08:51:48 19 QUESTION: Have you ever been invited to speak as  
08:51:52 20 a guest lecturer.

08:51:54 21 ANSWER: Yes. I've spoken a number of times to  
08:51:56 22 classes at MIT, Boston University, and University of Iowa.  
08:52:03 23 These were all on the nature of how to understand customer  
08:52:06 24 wants and needs, how to interview customers, consumers, and  
08:52:13 25 so on.



08:52:13 1 QUESTION: Since you have been conducting surveys  
08:52:20 2 since 1971, do you have any experience with surveys for  
08:52:24 3 video games.

08:52:24 4 ANSWER: Yes, I do. In -- in the early '80s, we  
08:52:29 5 were actually -- I was actually working with Atari in  
08:52:34 6 predicting how successful their new games were going to be.  
08:52:38 7 And we actually developed the procedure that Atari used to  
08:52:45 8 predict the sales of a new video game by bringing teenage  
08:52:49 9 boys in to play the games and then interview them after use  
08:52:53 10 of -- after they'd had a chance to play the game to see  
08:52:56 11 what their attitude and interest was.

08:52:58 12 QUESTION: Turning here a little bit, Mr. Klein,  
08:53:07 13 do you have any involvement in professional organizations.

08:53:09 14 ANSWER: Yes, I do. I'm a member of the American  
08:53:13 15 Association for Public Opinion Research; member of the  
08:53:16 16 Product Development Management Association; I'm a member of  
08:53:20 17 INFORMS, which is the Institute for Operations Research and  
08:53:24 18 the Management Science.

08:53:25 19 And I represented my company, AMS, on the Council  
08:53:29 20 of American Survey Research Organizations and to the  
08:53:34 21 International Trademark Association. And as part of my  
08:53:36 22 work with the International Trademark Association, I've  
08:53:41 23 been on their Proof of Confusion subcommittee for four  
08:53:45 24 years, and I was a member of their Opposition &  
08:53:48 25 Cancellation Standards & Procedures subcommittee for two

08:53:52 1 years.

08:53:56 2 ATTORNEY: At this time, I'd like to offer  
08:53:58 3 Mr. Klein as an expert in market research and consumer  
08:54:02 4 surveys.

08:54:02 5 Any objection, counsel?

08:54:06 6 ATTORNEY: No objection.

08:54:10 7 QUESTION: Mr. Klein, you mentioned that you were  
08:54:12 8 retained to do some surveys. How many surveys did you  
08:54:16 9 conduct.

08:54:16 10 ANSWER: I conducted three separate surveys.

08:54:21 11 QUESTION: And approximately how many individuals  
08:54:25 12 completed those surveys.

08:54:26 13 ANSWER: Each of the surveys had between 200, 300,  
08:54:31 14 and 600 respondents.

08:54:33 15 QUESTION: And what was the first survey you  
08:54:38 16 conducted.

08:54:39 17 ANSWER: The first survey was -- was focused on  
08:54:42 18 Brawl Stars. And -- and specifically focused on the issue  
08:54:47 19 of the beam style for the weapon.

08:54:52 20 And what we did was interviewed two different  
08:54:57 21 groups of people, current players of Brawl Stars, as well  
08:55:05 22 as people who had never played Brawl Stars before. And we  
08:55:08 23 showed them the existing beam style of weapon and then  
08:55:17 24 showed them an alternative beam style and asked their  
08:55:22 25 interest in playing Brawl Stars, depending on the -- how

08:55:28 1 the weapon's beam style were to change.

08:55:31 2 And so what you see on the screen are the actual  
08:55:35 3 questions that were asked.

08:55:37 4 The first question, top one, is the one that was  
08:55:41 5 directed to people who had never played Brawl Stars before.  
08:55:45 6 So we introduced them to Brawl Stars, and then showed them  
08:55:50 7 the -- the particular style of the -- of the beam -- weapon  
08:55:55 8 beam.

08:55:56 9 The second question is the one that was directed  
08:55:59 10 at current players where we ask if the style of the  
08:56:05 11 weapon's beam were to change, how would this impact your  
08:56:08 12 interest in playing Brawl Stars?

08:56:11 13 QUESTION: Why did you include prospective players  
08:56:15 14 in this survey.

08:56:15 15 ANSWER: The weapon's beam style is something that  
08:56:23 16 would be apparent both to current players -- certainly  
08:56:27 17 apparent to current players, but would also be seen by  
08:56:31 18 potential players when they look at the Brawl Stars app and  
08:56:34 19 information in -- on -- in the App Store.

08:56:36 20 And so we wanted to see whether there was going to  
08:56:39 21 be any impact on prospective players due to this change,  
08:56:44 22 which they would know about before actually starting to  
08:56:50 23 play the game.

08:56:52 24 QUESTION: Well, let's turn to the results of the  
08:56:55 25 survey.

08:56:55 1 What did the results show?

08:56:57 2 ANSWER: The results show that there would  
08:57:01 3 certainly not be a negative impact on consumer interest if  
08:57:06 4 the weapon's beam style would change.

08:57:09 5 This is the -- these are the results for the  
08:57:12 6 current players and shows that seven -- only 7.6 percent  
08:57:18 7 indicated that if the weapon's beam style were to change,  
08:57:22 8 it would diminish their interest. 23.3 [sic] percent said  
08:57:26 9 it would have no impact at all on their interest, and  
08:57:31 10 69.5 percent indicated that it would increase their  
08:57:34 11 interest.

08:57:43 12 QUESTION: All right. Mr. Klein, I'd like to move  
08:57:45 13 on to the second survey. What was that survey.

08:57:47 14 ANSWER: The second survey was -- was for Clash  
08:57:51 15 Royale, and here we were focusing specifically on the card  
08:57:55 16 donation feature. And so here we interviewed only current  
08:58:02 17 players of Clash Royale, or past players, but people who  
08:58:08 18 would have had an opportunity to experience and understand  
08:58:13 19 what the card donation process was like.

08:58:16 20 And so we described the current process, which --  
08:58:24 21 in which if you receive a card via donation from another  
08:58:29 22 clan member, you can -- and if that card fills your upgrade  
08:58:32 23 meter, then you can upgrade that card immediately.

08:58:36 24 And we described an alternative in which you could  
08:58:39 25 still receive donated cards from a clan member, but it

08:58:46 1 couldn't be the card that filled your upgrade meter. You'd  
08:58:49 2 still be able to keep that card, but the card that fills  
08:58:52 3 your upgrade meter and triggers the ability to upgrade that  
08:58:57 4 card would have to be obtained from some other way, either  
08:59:02 5 by winning it or finding it in a chest or something like  
08:59:04 6 that.

08:59:04 7 QUESTION: Why did you not include prospective  
08:59:11 8 players in this survey.

08:59:12 9 ANSWER: Prospective players wouldn't have the  
08:59:19 10 basis for understanding the card donation process or the  
08:59:24 11 way in which cards are upgraded. And so it wouldn't be  
08:59:30 12 appropriate to include them in -- in a survey asking them  
08:59:34 13 about how if something was to change that they had really  
08:59:39 14 had no experience with.

08:59:40 15 QUESTION: Thank you.

08:59:41 16 And turning to the results of your survey, what  
08:59:45 17 impact would -- would modifying the feature have on the  
08:59:52 18 interest of users' game play that play the game?

08:59:55 19 ANSWER: As -- as -- as in the case of Brawl  
09:00:02 20 Stars, 25 percent indicated that their interest would be  
09:00:05 21 diminished if they were no longer able to upgrade a card  
09:00:09 22 that filled their upgrade meter if it was received through  
09:00:13 23 a donation.

09:00:13 24 18.6 percent included it would have -- indicated  
09:00:19 25 it would have no impact on their interest. And 56.4 said

09:00:24 1 this change would increase their interest. So, certainly,  
09:00:28 2 no net negative impact on consumer interest in playing  
09:00:29 3 Clash Royale.

09:00:32 4 QUESTION: What is your understanding as to why  
09:00:40 5 the change may increase interest.

09:00:46 6 ANSWER: It -- it tends to level the playing  
09:00:51 7 field. It's -- you know, if you're a member of a generous  
09:00:58 8 plan that donates a lot, then you -- you have an  
09:01:01 9 opportunity to get more cards. This levels the playing  
09:01:05 10 field. It's similar to the way in which Supercell makes  
09:01:11 11 balancing adjustments over time to, as I say, level --  
09:01:19 12 level the playing field and -- and have people working at  
09:01:26 13 basically the same level.

09:01:27 14 QUESTION: Thank you.

09:01:28 15 Let's turn to your third survey. And what was  
09:01:30 16 that a survey of?

09:01:32 17 ANSWER: So this survey was for Clash of Clans and  
09:01:35 18 was specifically targeting the issue of the layout button  
09:01:40 19 or copy layout button.

09:01:47 20 And the -- in this case, we actually asked people  
09:01:49 21 about 10 -- asked respondents about 10 different features  
09:01:54 22 of the game, one of which was the copy layout button, which  
09:01:59 23 is the ability to copy a village layout from another clan  
09:02:04 24 member.

09:02:04 25 And -- and we asked for each of the 10 items, if

09:02:09 1 they were aware of that item, if they had ever used that  
09:02:13 2 item, and -- and in this -- and here's the ultimate  
09:02:19 3 QUESTION: If that item or feature became unavailable, how  
09:02:22 4 would that impact your interest in playing Clash of Clans?

09:02:31 5 QUESTION: And for -- what was your qualified  
09:02:36 6 group of respondents for this survey.

09:02:40 7 ANSWER: And, again, here, we were talking with  
09:02:43 8 current and -- and past players of the game. These are --  
09:02:53 9 the features that we were describing to people were ones  
09:02:56 10 that would only be apparent to someone who was actually  
09:03:01 11 playing the game, would not be apparent to someone who had  
09:03:06 12 -- had never played the game.

09:03:08 13 QUESTION: Thank you.

09:03:09 14 Let's turn to the results. What were -- what did  
09:03:13 15 the results show with respect to the copy layout?

09:03:16 16 ANSWER: With respect to the copy layout button,  
09:03:21 17 no one said it would significantly -- its absence would  
09:03:25 18 significantly decrease their interest in playing the game.

09:03:29 19 1.6 percent said it would moderately decrease  
09:03:35 20 their interest, 4.2 percent said it would slightly decrease  
09:03:41 21 their interest, 9 percent said it would have no impact on  
09:03:45 22 their interest, 3.2 said it would slightly increase their  
09:03:49 23 interest, 4.8 moderately increase their interest, and 2.9  
09:03:57 24 significantly increase their interest.

09:03:58 25 So here we've got something that is, again, not a

09:04:03 1 net negative impact, and very small numbers in terms of the  
09:04:07 2 effect of decreasing their interest.

09:04:08 3 QUESTION: You testified earlier that you reviewed  
09:04:16 4 a number -- or surveyed a number of other features. Did  
09:04:19 5 some of those other features exhibit a more significant  
09:04:25 6 decrease in interest than copy layout.

09:04:27 7 ANSWER: Yes. About half of them were considered  
09:04:36 8 by players to be a more significant change. For example,  
09:04:39 9 the ability to change your user name, here 1.6 percent of  
09:04:43 10 the respondents said it would significantly decrease their  
09:04:46 11 interest.

09:04:47 12 And you can look across the -- the -- the page and  
09:04:53 13 see that there's, you know, a greater -- more people say it  
09:05:00 14 would decrease their interest than -- than for the ability  
09:05:05 15 to use the copy layout button.

09:05:08 16 QUESTION: Let's talk about another feature.

09:05:10 17 How about the ability to participate in clan  
09:05:13 18 claims to earn rewards?

09:05:16 19 ANSWER: So here's a -- a feature that would have  
09:05:23 20 a net negative effect on customer consumer interest if --  
09:05:31 21 if it were removed.

09:05:32 22 You see 5.8 percent said it would significantly  
09:05:36 23 decrease their interest, 7 percent say it would  
09:05:39 24 significantly -- it would moderately decrease their  
09:05:41 25 interest, 11.8 percent slightly decrease their interest,



09:05:45 1 numbers that are much greater than for the copy layout  
09:05:47 2 button.

09:05:48 3 QUESTION: Let's talk about another feature, the  
09:05:52 4 ability to toggle between clan castle mode and between  
09:05:57 5 guard and sleep.

09:05:59 6 ANSWER: So, here, you can see that -- that even  
09:06:01 7 for what is a relatively obscure feature, the ability to  
09:06:09 8 use the copy layout button is -- gives smaller numbers on  
09:06:13 9 the negative side than -- than this -- this particular  
09:06:17 10 feature.

09:06:17 11 QUESTION: And let's just do one more, the ability  
09:06:24 12 to share replays with other clan members. What did the  
09:06:28 13 results show with that feature.

09:06:30 14 ANSWER: And here again, if you -- if that were  
09:06:33 15 not available as a feature in the game, more people would  
09:06:37 16 react negatively than they would to the rule of the copy  
09:06:43 17 layout button.

09:06:44 18 QUESTION: And I -- just to be clear, how many  
09:06:50 19 other features were included in this survey.

09:06:52 20 ANSWER: There were five other features included  
09:06:55 21 in the survey.

09:06:57 22 QUESTION: Could you just briefly summarize the --  
09:07:02 23 the general nature of those results.

09:07:04 24 ANSWER: They were in a similar range to this sort  
09:07:08 25 of showing that for all of these features, they are

09:07:14 1 considered relatively minor and would not have a major  
09:07:17 2 impact on interests in the game, with the exception of the  
09:07:26 3 ability to participate in the clan wars -- clan games.

09:07:29 4 ATTORNEY: Mr. Smith, you can take down this  
09:07:31 5 demonstrative. Thank you.

09:07:33 6 QUESTION: Did you conduct a survey with respect  
09:07:38 7 to the Elixir functionality in one of Supercell's games.

09:07:42 8 ANSWER: No, I did not.

09:07:43 9 QUESTION: Why not.

09:07:45 10 ANSWER: Well, the specific feature of the Elixir  
09:07:56 11 calculation and -- and the way in which the units of Elixir  
09:08:03 12 are added and subtracted, I was informed, could be adjusted  
09:08:08 13 so that it would not be an infringing alternative and that  
09:08:16 14 that change would be imperceptible to the user.

09:08:20 15 And so if you have something that is imperceptible  
09:08:24 16 to the user, it's simply inappropriate to even try and ask  
09:08:28 17 them what they -- what they would think about such an  
09:08:37 18 imperceptible change.

09:08:38 19 QUESTION: I may have misheard you. I think you  
09:08:41 20 said it would not be an infringing alternative. Is that  
09:08:46 21 what you said? Or explain what you meant by that.

09:08:49 22 ANSWER: Well, that by -- by a simple resequencing  
09:08:52 23 of the activities of the way in which the Elixir meter is  
09:08:59 24 incremented and decremented when cards are played or added,  
09:09:03 25 would -- that resequencing would result in a

09:09:11 1 non-infringement or would not be considered infringing.

09:09:22 2 And so since that would be a change that would not  
09:09:25 3 be perceived perceptible to a player, it wouldn't be  
09:09:29 4 appropriate to use it for a survey.

09:09:31 5 QUESTION: Thank you.

09:09:31 6 Did you form any opinions regarding Dr. Neal's  
09:09:35 7 survey?

09:09:35 8 ANSWER: Yes, I did.

09:09:36 9 QUESTION: Could you briefly summarize your  
09:09:42 10 opinion.

09:09:43 11 ANSWER: I believe that it's my opinion that  
09:09:45 12 Dr. Neal's survey is fundamentally and fatally flawed for a  
09:09:53 13 number of reasons, and certainly could not serve as a basis  
09:09:57 14 for any calculations related to damages in this -- in this  
09:10:03 15 matter.

09:10:04 16 In particular, the description that Dr. Neal used  
09:10:10 17 of the specific features is overly broad and covers much  
09:10:15 18 more than the specific element that is at issue in the --  
09:10:20 19 in the patent.

09:10:22 20 For example, in the Clash Royale survey, Dr. Neal  
09:10:33 21 described the feature as receive a donated card and upgrade  
09:10:37 22 that card.

09:10:40 23 And so the -- that includes not just receive a  
09:10:49 24 card and immediately be able to upgrade a card, but it  
09:10:52 25 includes receiving a card at some point and then maybe

09:10:55 1 days, weeks, months later getting the card that fills your  
09:11:00 2 upgrade meter and -- and -- and using it at that point.

09:11:03 3 And so this overly broad description of how card  
09:11:11 4 donations work means that you're including a lot more than  
09:11:18 5 just the specific ability to immediately be able to upgrade  
09:11:23 6 your card if it fills the -- fills your upgrade meter.

09:11:28 7 QUESTION: Thank you.

09:11:29 8 ATTORNEY: I'll pass the witness at this time.

09:11:32 9 QUESTION: Good afternoon, Mr. Klein. It is nice  
09:11:36 10 to see you again. My name is Taylor Ludlam.

09:11:41 11 ANSWER: Hi.

09:11:42 12 QUESTION: I attended your deposition back on May  
09:11:45 13 29th.

09:11:45 14 Mr. Klein, Supercell has not implemented the  
09:11:48 15 alternative beam style that you surveyed in the Brawl Stars  
09:11:51 16 game, correct?

09:11:52 17 ANSWER: I -- I'm not sure how I can -- how I  
09:12:00 18 answer that. I haven't -- I don't think I played Brawl  
09:12:03 19 Stars recently, so I don't -- I'm not in a position to say  
09:12:07 20 whether they've implemented it or not.

09:12:10 21 QUESTION: Okay. You don't know whether they've  
09:12:11 22 implemented the alternative beam style that you surveyed.

09:12:15 23 ANSWER: That's correct.

09:12:16 24 QUESTION: Okay. Supercell has also not  
09:12:18 25 implemented the alternative card donation feature that you

09:12:21 1 surveyed in Clash Royale; is that correct.

09:12:24 2 ANSWER: Again, I -- I really don't have any --  
09:12:29 3 any direct knowledge as to whether Supercell has  
09:12:34 4 implemented that or not.

09:12:35 5 QUESTION: Mr. Klein, you recall you had a  
09:12:40 6 deposition back on May 29th, correct?

09:12:42 7 ANSWER: Yes.

09:12:42 8 QUESTION: Okay.

09:12:46 9 ATTORNEY: Ms. Moore, could you please bring up  
09:12:49 10 Mr. Klein's deposition, Page 75?

09:12:59 11 QUESTION: Mr. Klein, if you recall in your  
09:13:01 12 deposition, you were asked: And are you aware of Supercell  
09:13:04 13 ever implementing the alleged non-infringing alternative  
09:13:06 14 that you suggest for Clash Royale?

09:13:10 15 ATTORNEY: Ms. Moore, if you could scroll down,  
09:13:16 16 please.

09:13:16 17 QUESTION: And you answered: No, I'm not aware of  
09:13:19 18 that.

09:13:20 19 Do you recall that testimony?

09:13:21 20 ANSWER: Yeah -- yes. Isn't that what I just  
09:13:28 21 said?

09:13:28 22 QUESTION: So you're not aware that Supercell has  
09:13:31 23 implemented the change that you surveyed for Clash Royale,  
09:13:33 24 correct?

09:13:33 25 ANSWER: Double negatives are -- are getting me

09:13:38 1 here.

09:13:39 2 I -- I -- I have no knowledge as to whether  
09:13:43 3 Supercell has implemented any of the alternative  
09:13:51 4 non-infringing features.

09:13:53 5 QUESTION: Okay. And are you -- and Supercell has  
09:13:57 6 not removed the copy layout feature from Clash of Clans  
09:14:05 7 either, have they.

09:14:05 8 ANSWER: That's -- that is my understanding, yes,  
09:14:08 9 they have not --

09:14:08 10 QUESTION: Okay.

09:14:09 11 ANSWER: -- removed it.

09:14:11 12 QUESTION: And in your Clash of Clans survey, you  
09:14:17 13 confirmed that players in the U.S. use copy layout in their  
09:14:22 14 gameplay, correct?

09:14:22 15 ANSWER: That was one of the questions we asked,  
09:14:25 16 yes.

09:14:25 17 QUESTION: And you confirmed that users in the  
09:14:29 18 U.S., the respondents, had used the copy layout feature in  
09:14:33 19 their gameplay, correct?

09:14:34 20 ANSWER: As I said, that's -- that was one of the  
09:14:37 21 questions we asked, and -- and that was -- and the answers  
09:14:42 22 were tabulated in my report. Excuse me.

09:14:44 23 QUESTION: Let's go to your report and take a look  
09:14:52 24 at that briefly.

09:14:54 25 ATTORNEY: Susie, could you please pull up

09:14:58 1 Paragraph 147 of his -- of Mr. Klein's report? Ms. Moore,  
09:15:19 2 are you able to scroll to Paragraph 147?

09:15:42 3 QUESTION: Mr. -- Mr. Klein, you asked respondents  
09:15:48 4 in your survey -- there we go -- next respondents were  
09:15:52 5 asked how many times they had used each feature, and that  
09:15:58 6 top line there confirms that respondents in your survey  
09:16:02 7 used the copy layout feature, correct?

09:16:04 8 ANSWER: That's correct.

09:16:07 9 ATTORNEY: No further questions.

09:16:13 10 QUESTION: Just one quick question for you,  
09:16:15 11 Mr. Klein, I believe.

09:16:17 12 Ms. Taylor just asked you that that table you saw  
09:16:22 13 confirmed the respondents used the copy layout feature in  
09:16:27 14 the United States. Were you referring to some respondents  
09:16:35 15 or all respondents?

09:16:36 16 ANSWER: The table tabulated the number of  
09:16:42 17 respondents who answered that they had used it. So it  
09:16:45 18 was -- I think if my memory serves me correctly, 83 of the  
09:16:55 19 313 respondents that we surveyed indicated that they had  
09:17:00 20 used the copy layout button.

09:17:01 21 QUESTION: Thank you.

09:17:06 22 ATTORNEY: No further questions.

09:17:07 23 (Videoclip ends.)

09:17:09 24 THE COURT: Does that complete this witness by  
09:17:11 25 deposition?

09:17:11 1 MR. DACUS: It does, Your Honor. Thank you.

09:17:13 2 THE COURT: Call your next witness.

09:17:14 3 MR. DACUS: Your Honor, Supercell calls Chris  
09:17:17 4 Bakewell.

09:17:17 5 THE COURT: All right.

09:17:18 6 MR. DACUS: May I approach and pass out binders,  
09:17:21 7 Your Honor?

09:17:21 8 THE COURT: You may.

09:17:22 9 Mr. Bakewell, if you'll come forward and be sworn.

09:17:42 10 (Witness sworn.)

09:17:43 11 THE COURT: Please come around, have a seat on the  
09:17:45 12 witness stand, sir.

09:17:46 13 THE WITNESS: Thank you.

09:17:48 14 COURT SECURITY OFFICER: Yes, sir.

09:17:50 15 THE COURT: Mr. Dacus, you may proceed.

09:17:58 16 MR. DACUS: Thank you, Your Honor.

09:17:58 17 CHRIS BAKEWELL, DEFENDANT'S WITNESS, SWORN

09:17:58 18 DIRECT EXAMINATION

09:17:59 19 BY MR. DACUS:

09:17:59 20 Q. Mr. Bakewell, would you introduce yourself to the jury,  
09:18:02 21 please, sir?

09:18:03 22 A. Yes, hi, good morning. My name is Chris Bakewell.

09:18:06 23 Q. Where do you live, Mr. Bakewell?

09:18:08 24 A. I live in Sugar Land, Texas, outside of Houston.

09:18:12 25 Q. And what are you here today to talk with the jury



09:18:14 1 about, sir?

09:18:15 2 A. Well, I'm here to talk about damages.

09:18:17 3 Q. Can you please explain to the jury what you do for a  
09:18:20 4 living?

09:18:20 5 A. I am a managing director at a firm called Duff &  
09:18:26 6 Phelps, and the work that I do focuses on the valuation of  
09:18:29 7 intellectual property and technology-rich businesses. I'm  
09:18:36 8 a valuation expert, is the shortest way to say it.

09:18:38 9 Q. And in what -- what areas do you value -- value  
09:18:42 10 intellectual property in patents?

09:18:44 11 A. So I do it in a variety of context. Sometimes it's in  
09:18:50 12 a dispute context, litigation like this. Sometimes it's  
09:18:53 13 when companies buy or sell other companies, you have to do  
09:18:57 14 something called a purchase price allocation and value all  
09:19:00 15 the assets of the business, including patents and  
09:19:03 16 intangible assets.

09:19:06 17 Sometimes for licensing, companies will ask me for  
09:19:09 18 help in trying to figure out how much to pay in like a  
09:19:12 19 real-world license and sometimes strategy types of things.  
09:19:16 20 So it can be for a variety of reasons.

09:19:18 21 Q. And about how many times have you valued intellectual  
09:19:21 22 property over the course of your professional career?

09:19:23 23 A. Well, it's been a lot. It's been hundreds, many  
09:19:27 24 hundreds.

09:19:27 25 Q. Would you please give the jury just a brief description

09:19:30 1 of your educational background, please, sir?

09:19:32 2 A. Sure. So I have two degrees. I have an undergraduate  
09:19:36 3 degree, a Bachelor of Science degree from a liberal arts  
09:19:42 4 college called Bradley University. I studied finance and  
09:19:45 5 also computer science.

09:19:46 6 After that, I went and programmed computers for --  
09:19:53 7 it was some of the earliest cellular systems at Motorola.

09:19:56 8 Then I went to graduate school at the University  
09:19:59 9 of Maryland and got an MBA. I focused -- again, it was --  
09:20:05 10 the concentration was in finance and information systems.

09:20:10 11 So those are the two degrees, an MBA in finance  
09:20:13 12 information systems and a Bachelor of Science degree.

09:20:15 13 Q. Who do you work for now, Mr. Bakewell?

09:20:17 14 A. The firm is called Duff & Phelps.

09:20:19 15 Q. Okay. And what do you do there? What are your job  
09:20:22 16 responsibilities?

09:20:23 17 A. So I have several. I -- I have client  
09:20:25 18 responsibilities, as I described a moment ago, relating to  
09:20:28 19 intellectual property rights and technology-rich  
09:20:32 20 businesses.

09:20:32 21 I run our Houston office. I lead our intellectual  
09:20:36 22 property practice. And I sit on something like a  
09:20:40 23 management committee in the firm.

09:20:42 24 Q. And before you worked at Duff -- how long have you  
09:20:46 25 worked at Duff & Phelps, first of all?

09:20:49 1 A. About 12 years.

09:20:49 2 Q. And so give the jury some indication of what you did  
09:20:52 3 before you went to work at Duff & Phelps?

09:20:55 4 A. So I worked for another -- two other consulting firms  
09:20:58 5 before that. And then, before that, I spent eight years  
09:21:02 6 working for a company that built power plants and systems  
09:21:05 7 that went on ships.

09:21:07 8 The focus was the -- of the technology was to turn  
09:21:10 9 the power generation on and off very quickly. I did that  
09:21:17 10 for about eight years. I lived in Amsterdam and Houston  
09:21:21 11 and on the East Coast while I did that. And that's where I  
09:21:24 12 had the opportunity to lead financial teams and negotiate  
09:21:29 13 licenses, set business strategy.

09:21:32 14 And then I described how, before I went to  
09:21:35 15 graduate school, I worked and did computer programming. So  
09:21:38 16 that's been -- that's kind of a synopsis of my 30 years  
09:21:43 17 that I've been working or so.

09:21:45 18 Q. In addition to your degrees, do you have any  
09:21:48 19 professional certifications that are relevant to the  
09:21:50 20 opinions that you're giving here today?

09:21:51 21 A. I do. I have two. I have a certification called  
09:21:55 22 Certified Licensing Professional. That's the type of  
09:21:58 23 licensing that we talked about -- or we'll talk about in a  
09:22:04 24 moment.

09:22:05 25 We -- we've seen licenses in this case, as I've

09:22:09 1 been sitting here through trial. That's a designation that  
09:22:11 2 is awarded by an organization called the Licensing  
09:22:16 3 Executive Society.

09:22:17 4 I'm also an accredited senior appraiser. That's  
09:22:20 5 called an ASA. That's somebody who appraises or is  
09:22:25 6 certified to appraise assets. My focus has been on  
09:22:30 7 appraisal of intellectual property assets throughout my  
09:22:33 8 career, as I described.

09:22:34 9 Q. In your career, have you actually negotiated patent  
09:22:38 10 licenses?

09:22:38 11 A. I have, in -- in a variety of contexts. When I was in  
09:22:42 12 industry, as I just explained, I would be the person who  
09:22:46 13 would lead the negotiations. I would either interact with  
09:22:50 14 people directly, or I would have a team of people or  
09:22:53 15 policies or strategies that I would help set.

09:22:57 16 And then as a consultant, I've assisted people  
09:23:00 17 like that in negotiating licenses and performed analyses  
09:23:04 18 and -- and helped out in -- in that way.

09:23:06 19 Q. Do you have specific experience in licensing and  
09:23:10 20 valuing damages related to video games?

09:23:14 21 A. I actually do. I've -- I have a couple of examples.  
09:23:20 22 One of them I'll talk about briefly. I worked for a  
09:23:24 23 company that had the intellectual property for Atari, both  
09:23:30 24 patents, as well as other IP, like trademarks. And I  
09:23:36 25 helped that company negotiate licenses.

09:23:38 1 MR. DACUS: Your Honor, at this time, we would  
09:23:40 2 offer Mr. Bakewell as an expert in intellectual property  
09:23:43 3 valuation and patent damages.

09:23:45 4 THE COURT: Is there objection?

09:23:45 5 MS. LUDLAM: No objection, Your Honor.

09:23:47 6 THE COURT: Without objection, the Court will  
09:23:50 7 recognize this witness as an expert in those designated  
09:23:52 8 fields.

09:23:53 9 MR. DACUS: Thank you.

09:23:53 10 THE COURT: Please continue.

09:23:54 11 MR. DACUS: Thank you, Your Honor.

09:23:56 12 Q. (By Mr. Dacus) Mr. Bakewell, can you tell the jury  
09:23:58 13 what it is specifically you were asked to do in this case?

09:24:00 14 A. So I was asked to do two things. You all heard  
09:24:04 15 Dr. Becker testify. I was asked to review his work, and I  
09:24:09 16 was asked to form my own independent opinion should you all  
09:24:12 17 get to the question of what a reasonable royalty might be.

09:24:16 18 Q. And -- and give the jury, if you would, please, sir,  
09:24:19 19 some indication of what type of information you reviewed in  
09:24:23 20 reaching your opinions in this case.

09:24:24 21 A. Well, I think being one of the last witnesses, it's an  
09:24:31 22 advantage to be able to describe that because you've seen  
09:24:33 23 many of those types of things.

09:24:35 24 I -- I reviewed expert reports. Dr. Becker wrote  
09:24:39 25 an expert report. Mr. Klein wrote an expert report. I

09:24:43 1 interviewed Mr. Klein. I reviewed documents that were  
09:24:47 2 produced by the parties. There were other deposition  
09:24:52 3 transcripts. There were legal pleadings and the like. So  
09:24:56 4 all the types of things that you've seen, I've -- those are  
09:25:02 5 the types of materials that I've seen.

09:25:04 6 I made a point of reviewing all the materials that  
09:25:08 7 Dr. Becker has, and then we've heard -- I mean, he didn't  
09:25:11 8 talk about Mr. Klein.

09:25:12 9 I talked to Mr. Klein. For example, I reviewed  
09:25:15 10 Dr. Neal's survey, as well. So that's the type of  
09:25:18 11 materials I reviewed.

09:25:19 12 Q. Did you have an opportunity to talk with and interview  
09:25:22 13 Supercell's technical experts that have testified in this  
09:25:25 14 case?

09:25:25 15 A. I did. I had the opportunity to -- to talk to them.  
09:25:29 16 I've been here through most of the trial, so I've heard  
09:25:33 17 them all testify, as well. I reviewed their reports and  
09:25:37 18 their deposition transcripts, too.

09:25:40 19 Q. Mr. Bakewell, did you prepare some slides to assist the  
09:25:44 20 jury with your -- your testimony today related to  
09:25:48 21 reasonable royalties and damages?

09:25:50 22 A. Yes, sir.

09:25:52 23 Q. Can we just start, and can you explain at a high level,  
09:25:55 24 before we get into the details the summary of your  
09:25:57 25 opinions?

09:25:57 1 A. Sure. So this slide is in two parts, and I think it's  
09:26:02 2 important that it's in two parts.

09:26:05 3 The top part says if the patents-in-suit are  
09:26:07 4 invalid, there's no damages.

09:26:11 5 And if the patents-in-suit are not infringed,  
09:26:13 6 there's no damages.

09:26:14 7 So you don't get to the point -- if you find  
09:26:17 8 either of those things, you don't have to pay attention to  
09:26:19 9 my testimony or -- or Dr. Becker's testimony. And I think  
09:26:25 10 that's an important distinction.

09:26:27 11 So I -- my testimony only applies if you get to  
09:26:30 12 the question of, hey, what is a reasonable royalty? And  
09:26:34 13 that's what I put at the bottom of this slide.

09:26:36 14 So it says if -- like if you get to this question,  
09:26:40 15 what's a reasonable royalty like? And that's the -- let's  
09:26:44 16 call that the construct or like the paradigm that I have to  
09:26:49 17 operate under.

09:26:50 18 And in -- in that regard, my opinion is  
09:26:52 19 realistically, the evidence shows that a reasonable royalty  
09:26:55 20 would be in the form of a lump sum. So it'd be a one-time  
09:27:01 21 payment. It wouldn't be a percentage-based running  
09:27:05 22 royalty. And we'll talk about that. There's no evidence  
09:27:07 23 to support that.

09:27:08 24 And that the value of these patents, when you look  
09:27:10 25 at them and value them, it's -- they're not significant.

09:27:14 1 Or "de minimus" is the word we use in our field. That  
09:27:19 2 means not significant or -- but we'll talk about that, too.  
09:27:23 3 Q. Tell us, if you would, sir, just at a high level,  
09:27:28 4 what -- what issues you had with -- with Dr. Becker's  
09:27:31 5 opinions and -- and with GREE's damages theories in this  
09:27:35 6 case before we dig into the details?

09:27:37 7 A. Sure. So we'll, I think, come back to this slide a  
09:27:41 8 couple of times. This is a little bit of a roadmap of what  
09:27:44 9 my opinions are.

09:27:45 10 First of all, is that there hasn't been  
09:27:48 11 significant value shown. Dr. Becker didn't show that there  
09:27:52 12 was significant value, for a couple of reasons. He didn't  
09:27:55 13 focus on the patents-in-suit, and he disregarded some data,  
09:27:59 14 like Mr. Klein's survey would be an example.

09:28:04 15 And then the second X on this slide is the Japan  
09:28:07 16 license, which we heard about. And that's a license that  
09:28:11 17 has 1,079 patents, and it provided a broad operating  
09:28:18 18 freedom. And we'll come back to this and describe what --  
09:28:22 19 what that means.

09:28:22 20 Q. Now, Dr. Becker told the jury about this hypothetical  
09:28:26 21 negotiation, which is basically how you, as experts, and  
09:28:30 22 the jury are to -- to view this valuation?

09:28:33 23 Did you use that same type of scenario or  
09:28:36 24 construct?

09:28:36 25 A. Yes, I did.



09:28:37 1 Q. And who are the two parties at this hypothetical  
09:28:41 2 negotiation over the value of these five patents?

09:28:43 3 A. It's GREE and Supercell.

09:28:44 4 Q. Let's -- let's talk about this first bullet point that  
09:28:54 5 says: No significant value shown. Did not focus on the  
09:28:57 6 patents-in-suit.

09:28:58 7 Explain to the jury why -- why you say that and  
09:29:01 8 why you have that criticism.

09:29:03 9 A. Sure. So we just saw that -- saw that video of  
09:29:07 10 Mr. Klein. And when he testified, he talked about  
09:29:13 11 alternatives and measuring the val -- or doing his survey  
09:29:16 12 relative to alternatives or non-infringing alternatives.

09:29:23 13 And that's important because we're talking about  
09:29:26 14 patents here that have specific claims. I mean, we've  
09:29:29 15 heard the technical experts go through and talk about  
09:29:31 16 claims, and they have checkmarks on charts.

09:29:34 17 And they're like, this is what the patent covers.  
09:29:37 18 And you need to be very specific when you're valuing  
09:29:40 19 patents to figure out what the patents cover and what they  
09:29:42 20 don't.

09:29:43 21 And the way that you do that, a tool is  
09:29:47 22 non-infringing alternatives.

09:29:50 23 And Dr. Neal, when he spoke, he talked about  
09:29:54 24 removing the entire feature, right, not what you could do  
09:29:57 25 instead.

09:29:58 1 Mr. Klein, his discussion was different. He -- he  
09:30:03 2 discussed how when he conducted his survey, he looked at  
09:30:06 3 one way of doing things versus another way of doing things.

09:30:10 4 Like, a beam style versus another beam style that  
09:30:14 5 he and I understand from the technical experts is not  
09:30:20 6 infringing. That's the way that -- if you want to value a  
09:30:22 7 patent right and get specific to the patent right, that's  
09:30:25 8 the right way of doing it.

09:30:26 9 So that's an issue with Dr. Neal's survey. He  
09:30:29 10 didn't consider non-infringing alternatives. Instead, he  
09:30:31 11 studied removing two features.

09:30:35 12 I'll let you ask another question. I'm going on  
09:30:38 13 for a while now.

09:30:39 14 MR. DACUS: Your Honor, may I --

09:30:41 15 THE COURT: That'd be a good idea.

09:30:43 16 MR. DACUS: Thank you, Your Honor.

09:30:43 17 May I approach the flip chart?

09:30:45 18 THE COURT: You may.

09:30:47 19 Q. (By Mr. Dacus) So what do you mean, Mr. Bakewell, when  
09:30:49 20 you say that Dr. Neal only studied removing two features?

09:30:53 21 A. So we talked about the removing part. He only surveyed  
09:30:57 22 two features. He didn't survey all four. And Dr. Klein --  
09:31:05 23 or Mr. Klein's had surveyed three, and he discussed why he  
09:31:08 24 couldn't survey the fourth. So he actually considered  
09:31:12 25 surveying four features. Dr. Neal only talked about two

09:31:16 1 features, as we've heard.

09:31:17 2 Q. Do you think it's economically appropriate for purposes  
09:31:20 3 of valuing these patents to utilize surveys for -- for one  
09:31:29 4 feature and apply it to three others?

09:31:30 5 A. No. I think it's best if you can survey those features  
09:31:38 6 directly and ask questions about those. Or if you have  
09:31:41 7 enough evidence, as Mr. Klein did, to reach a conclusion  
09:31:44 8 regarding a particular feature, you can do that.

09:31:47 9 It's -- it's -- if you're going to try to value  
09:31:51 10 particular -- particular patent rights or an asset, try to  
09:31:54 11 value that specific asset if you can. So it's better  
09:31:59 12 practice to value the specific assets.

09:32:02 13 Q. Did you look at the specific features as they relate to  
09:32:05 14 each of the three games, in your analysis, Mr. Bakewell?

09:32:08 15 A. I did.

09:32:10 16 Q. Let -- let's start with Clash Royale?

09:32:13 17 Can you explain to the jury what you're attempting  
09:32:18 18 to convey in this slide and what you looked at with respect  
09:32:22 19 to whether or not these patents add value to the Clash  
09:32:26 20 Royale game?

09:32:26 21 A. So if we think about the broader context of what we're  
09:32:31 22 doing here in this patent case, we're talking about three  
09:32:35 23 patents here that relate specifically to Clash Royale, and  
09:32:41 24 I have the patents on the left of the screen.

09:32:44 25 And on the right, just a few things from Clash

09:32:49 1 Royale that we've heard testimony about throughout the past  
09:32:52 2 few days that make the game successful.

09:32:55 3 It's important for context to keep this type of  
09:32:58 4 stuff in mind. The story line, the characters, all of the  
09:33:04 5 features, the changes, I mean, that's what creates value.  
09:33:09 6 That's what -- what we refer to as driving demand for the  
09:33:14 7 product.

09:33:14 8 And when you -- when you have a situation like  
09:33:16 9 that where the patented features, the patents relate only  
09:33:20 10 to specific aspects, trying to figure out a rate and apply  
09:33:24 11 it to all the revenues from the game, that's a problem.  
09:33:27 12 That creates the possibility for error.

09:33:31 13 And keeping this context in mind I think is -- is  
09:33:35 14 very important.

09:33:36 15 Q. Did -- did you talk to the Supercell technical experts  
09:33:40 16 related to whether or not these patents contribute value?  
09:33:42 17 And, if so, how much to these games?

09:33:47 18 A. I did. I said, hey, you guys have really dug into  
09:33:50 19 these patents and these products. So let me ask you what  
09:33:53 20 you think.

09:33:53 21 And these are the two experts that we've heard  
09:33:55 22 from over the last couple of days, Mr. Friedman and I think  
09:34:01 23 it's Dr. Zagal, the technical experts for the patents that  
09:34:07 24 relate to Clash Royale.

09:34:08 25 I asked them, I said, hey, is -- is there a way

09:34:12 1 that these patents, from your perspective, are linked to  
09:34:15 2 revenues? Is there any way that they generate additional  
09:34:19 3 revenues from a technical point of view? And they told me  
09:34:24 4 no.

09:34:24 5 In particular, Dr. Zagal said, hey, the 6 -- the  
09:34:28 6 '655 patent doesn't have anything to do really with the  
09:34:30 7 technology of -- of the games. It's -- relates more to an  
09:34:34 8 idea.

09:34:34 9 And there's other ideas and features that are more  
09:34:38 10 important in Clash Royale, and I've listed them out. We  
09:34:40 11 just talked about them a moment ago. They told me the same  
09:34:44 12 type of thing from a technical point of view.

09:34:46 13 Q. In rendering your opinions, did you also consider  
09:34:49 14 information from the game leads at Supercell, including  
09:34:54 15 their testimony here at trial, in -- in trying to determine  
09:34:57 16 whether or not these features add value to the Clash Royale  
09:35:01 17 game?

09:35:02 18 A. I did. So I interviewed Mr. Ahlgren in this case, and  
09:35:06 19 we saw his testimony, as well. This is some of that actual  
09:35:14 20 testimony that we saw.

09:35:15 21 He was asked -- this is just an example of some of  
09:35:18 22 the things that he and I talked about.

09:35:19 23 What -- what's the most important things to users  
09:35:23 24 of Clash Royale?

09:35:24 25 And the answer there, he said: I'd say it's the

09:35:28 1 whole game, it's the battle, the gameplay, the players, the  
09:35:36 2 progress, like the story line, that's what he said in his  
09:35:39 3 first answer.

09:35:40 4 And I asked him if Supercell valued these features  
09:35:45 5 on a day-to-day basis. Was there anything in Supercell's  
09:35:49 6 records where they kept track of profits or revenues  
09:35:54 7 associated with these features?

09:35:55 8 And he said, no, he wouldn't put a monetary value  
09:35:58 9 on it. It's a complex game. It's the entire game that --  
09:36:03 10 with all the features assembled together, like we talked --  
09:36:05 11 excuse me -- talked about that Supercell looks at.

09:36:09 12 Q. Did you look outside of Supercell as sort of that third  
09:36:13 13 party, people who don't have a dog in the fight, to see if  
09:36:17 14 they had -- there was any information in the public domain  
09:36:19 15 that might tell you whether or not these patented features  
09:36:22 16 versus other features were important to the Clash Royale  
09:36:28 17 game?

09:36:28 18 A. I did. I looked at articles that -- and did my own  
09:36:32 19 independent research, and this is an example of one of  
09:36:35 20 those articles.

09:36:36 21 It says: 7 Reasons Why You Can't Stop Playing  
09:36:40 22 Clash Royale. And I've listed those on the right-hand side  
09:36:47 23 of this slide. Updates, the clan, friends, that's what  
09:36:51 24 people talked about in the -- what we call the public  
09:36:54 25 domain. And session length is another one that's

09:36:58 1 important.

09:36:58 2 Q. Let's pause on that one. So session length, what did  
09:37:02 3 you understand that to mean based on the article?

09:37:04 4 A. So the article and when I spoke with people at  
09:37:07 5 Supercell and the technical experts -- this is true for all  
09:37:15 6 the games, but it's probably worth talking about here  
09:37:19 7 briefly.

09:37:19 8 So there's trade-offs in the game, right? They  
09:37:21 9 want users to stay engaged and to play the game, obviously,  
09:37:24 10 because that's how you become successful. But they also  
09:37:27 11 want it to be a length where people will set down the game  
09:37:34 12 after a period of time and not get tired of playing, and  
09:37:37 13 pick it up again.

09:37:38 14 So there's -- there's a trade-off in terms of the  
09:37:41 15 length of time. It's not just like more time is better,  
09:37:44 16 and that's why it's described this -- this way in this  
09:37:46 17 article. It's not like you play more and it's better, play  
09:37:53 18 forever.

09:37:54 19 The games are designed to have particular session  
09:37:58 20 lengths so the people's interest is maintained over a  
09:38:02 21 longer period of time. So there's pros and cons. You have  
09:38:04 22 to consider both sides. Sometimes shorter is better, and  
09:38:06 23 sometimes longer is better, and it's really a combination  
09:38:10 24 that they're seeking to achieve with these games.

09:38:13 25 Q. And, finally, in looking at Clash Royale in rendering

09:38:17 1 your opinions, did you review and rely on the information  
09:38:21 2 from Mr. Klein who we just heard from?

09:38:24 3 A. I did. So I talked to Mr. Klein along the way, and I  
09:38:28 4 read his expert report and I saw his testimony just like  
09:38:33 5 you all did, so I -- I don't have to read this entire  
09:38:37 6 slide.

09:38:38 7 But this is an excerpt from what he said where he  
09:38:40 8 talked about the pros and cons of the features, that some  
09:38:45 9 people said, hey, we're more interested, and some people  
09:38:48 10 said they're less interested.

09:38:50 11 In terms of the '655 patent, which is the one that  
09:38:53 12 he studied for Clash Royale, some people said that their  
09:39:00 13 interest would be diminished, and some people said that  
09:39:04 14 their interest would change if a non-infringing alternative  
09:39:07 15 was implemented. Remember, we talked about that a moment  
09:39:10 16 ago, too.

09:39:11 17 Q. Was the net effect -- your understanding of the net  
09:39:14 18 effect that if you took this '655 patented feature out,  
09:39:18 19 that the net effect was that it wouldn't change on a net  
09:39:22 20 basis? If you took all the information on a net basis, it  
09:39:25 21 wouldn't change the amount of time that people played the  
09:39:28 22 game?

09:39:28 23 A. That's right. That's what Mr. Klein said, that's what  
09:39:31 24 his conclusion was, and that's what other people said, as  
09:39:34 25 well; technical experts, articles, people from Supercell.



09:39:37 1 Q. Did you also look at the Brawl Stars game in an effort  
09:39:43 2 to determine whether or not the '873 patent contributed  
09:39:47 3 value to the Brawl Stars game?

09:39:49 4 A. Yes. And this is conveying the same sort of ideas we  
09:39:52 5 just spoke about with the Clash Royale, that there's --  
09:39:57 6 there's a lot here in the game, and the patent relates to  
09:40:03 7 only to one feature.

09:40:03 8 Q. And in doing so, did you rely on your conversations  
09:40:06 9 with people at Supercell and their testimony that they gave  
09:40:09 10 here at this trial?

09:40:11 11 A. Yes, I did.

09:40:13 12 Q. And what -- what did you -- what was important to you  
09:40:16 13 in your analysis and what do you believe is important to  
09:40:19 14 the jury in that regard?

09:40:20 15 A. Well, this is similar. So Mr. Franzas is the lead  
09:40:23 16 programmer at Supercell, and we saw his video -- I think it  
09:40:28 17 was yesterday.

09:40:29 18 He was asked what the most important features are  
09:40:32 19 in Brawl Stars.

09:40:33 20 He talked about progress, game modes, maps, and  
09:40:39 21 that type of stuff. That's at the top of this slide. And  
09:40:44 22 at the bottom about user engagement, he talked about how  
09:40:49 23 they develop new brawlers. And the one part that I'd like  
09:40:53 24 to call out from his testimony there is he said there's  
09:40:57 25 hundreds of things that are done, even thousands.

09:40:59 1 Q. And consistent with what you did for the Clash Royale  
09:41:04 2 analysis, did you also look at third-party information and  
09:41:08 3 Dr. -- I mean, Mr. Klein's survey in determining whether or  
09:41:11 4 not the '873 added value to the Brawl Stars game?

09:41:14 5 A. Yes, I did.

09:41:15 6 Q. And what did you find?

09:41:16 7 A. So Mr. Klein spoke about this a moment ago by video.  
09:41:21 8 He said that if the beam style for the weapon was to  
09:41:30 9 change, that actually for most of the people would increase  
09:41:36 10 interest if you put in an alternative beam style, and for  
09:41:40 11 some of the people it would decrease their interest.

09:41:44 12 And so, again, he said in terms of creating value  
09:41:48 13 from a survey perspective that the net effect is -- is  
09:41:51 14 basically zero.

09:41:54 15 Q. And, of course, we -- we saw that when -- even -- even  
09:41:57 16 for Dr. Neal's survey, when you include all of the survey  
09:42:02 17 results, the net effect, even in his own survey was zero in  
09:42:07 18 some instances, correct?

09:42:09 19 A. That's right. When you considered the net effect, it  
09:42:12 20 was zero in some instances, or it diminished the number  
09:42:17 21 significantly.

09:42:17 22 Q. Did you also look specifically at the Clash of Clans  
09:42:20 23 game and whether or not this '594 patent, which is the one  
09:42:23 24 I think where the net effect was zero, whether or not that  
09:42:26 25 added value to the Clash of Clans game?

09:42:28 1 A. Yes. So same idea here is what this slide is  
09:42:33 2 communicating, that it's just one of many aspects of the  
09:42:35 3 overall game.

09:42:37 4 Q. Did you rely, as you did on the others, on your  
09:42:41 5 conversations with Mr. Joas and his testimony that he gave  
09:42:45 6 here in the trial of this case?

09:42:47 7 A. Yes.

09:42:48 8 Q. Okay. What -- what did that tell you? What did that  
09:42:50 9 reveal?

09:42:50 10 A. So he was asked about quality of life features like  
09:42:55 11 copy layout, and he said that people don't play Clash of  
09:43:00 12 Clans because of quality of life features. That's what --  
09:43:06 13 the top answer.

09:43:07 14 And the bottom, he was asked about the copy  
09:43:09 15 layout, and he said that there's no connection to buying  
09:43:13 16 gems. He said, I don't think copy layout actually  
09:43:15 17 contributes to gem sales at all.

09:43:17 18 Q. And you rely -- you heard that Mr. -- Dr. Claypool  
09:43:23 19 testify here, correct?

09:43:24 20 A. Right. He was on video yesterday.

09:43:27 21 Q. And Dr. Claypool identified many of the features that  
09:43:29 22 are included in the Clash of Clans game, correct?

09:43:31 23 A. Correct.

09:43:32 24 Q. Did you likewise rely on Mr. Klein's survey that he  
09:43:37 25 just testified about with respect to whether or not this

09:43:41 1 '594 copy layout feature increases the value of the Clash  
09:43:46 2 of Clans game?

09:43:47 3 A. I did. And this is similar testimony that we saw with  
09:43:50 4 the other three surveys that he did. He said there's pros  
09:43:54 5 and cons. That's what's on the screen here.

09:43:56 6 Q. So is it fair to say that Mr. Klein's survey, when you  
09:44:00 7 consider all the information, is consistent with actually  
09:44:04 8 GREE's survey that shows there's zero percent increased  
09:44:10 9 time related to the copy layout feature in the Clash of  
09:44:15 10 Clans game?

09:44:15 11 A. Correct. If you consider all the information, the pros  
09:44:17 12 and the cons, the pros and the cons of non-infringing  
09:44:22 13 alternatives, the pros and the cons of session length,  
09:44:26 14 right, longer is not always better. It's a trade-off.  
09:44:30 15 There's no significant impact from these particular  
09:44:36 16 features.

09:44:37 17 Q. Now, we've talked a lot about Supercell evidence and  
09:44:40 18 evidence that came from Supercell folks and Super --  
09:44:45 19 Supercell documents. Did you also find evidence within  
09:44:47 20 GREE documents that helped you value these patents and told  
09:44:51 21 you whether or not these patents added value to the games?

09:44:54 22 A. Yes, I did.

09:44:55 23 Q. And what did you find?

09:44:56 24 A. Well, here's two examples. In GREE's documents, they  
09:45:03 25 talk about how it's the entirety of the game that's

09:45:07 1 creating value from GREE's perspective. It's not any  
09:45:11 2 particular feature.

09:45:13 3 So at the top, it says: GREE -- I highlighted the  
09:45:19 4 part -- it says: If Clash of Clans is the bar, we have a  
09:45:22 5 lot of work do it.

09:45:24 6 I think it means we have a lot of work to do.  
09:45:28 7 It's a very polished and well-thought-out game.

09:45:32 8 And the bottom -- this comes from DX-1217. The  
09:45:35 9 other one came from DX-1218. It says: My biggest concern  
09:45:41 10 is that Clash of Clans is a very well-done game from a game  
09:45:45 11 design perspective.

09:45:46 12 Q. And that's GREE speaking, correct?

09:45:48 13 A. That's GREE.

09:45:50 14 Q. Were you also here when Mr. Sheppard, who was the  
09:45:54 15 former chief executive officer of GREE, testified?

09:45:56 16 A. Yes.

09:45:56 17 Q. Did you hear Mr. Sheppard talk about the Supercell  
09:46:00 18 games and what attributes make them successful or valuable?

09:46:04 19 A. I did.

09:46:04 20 Q. We have his testimony here on the screen. Is that  
09:46:11 21 consistent with what you've been telling the jury?

09:46:13 22 A. Yes, it's consistent with all of the evidence on  
09:46:17 23 balance in this case. They said there's a lot of things  
09:46:19 24 that make Clash of Clans successful. They talk about some  
09:46:25 25 of the business reasons, too. Like, first to market,

09:46:28 1 that's what's on his testimony on this slide.

09:46:31 2 Q. Mr. Sheppard, as the former CEO of GREE through 2017,  
09:46:37 3 did you hear him say or testify in any way that Supercell  
09:46:41 4 had taken GREE's technology or used their patents?

09:46:45 5 A. I didn't hear him say that, no.

09:46:47 6 Q. Certainly, he had the incentive to say that as -- as  
09:46:51 7 the former CEO, correct?

09:46:53 8 A. Well, I don't know if he had the incentive, but he --  
09:46:56 9 he didn't say that.

09:46:58 10 Q. And -- and what about GREE's success or lack of success  
09:47:05 11 for its games in the United States, is that a factor in  
09:47:08 12 what you look at?

09:47:09 13 A. It is. It is.

09:47:11 14 Q. Is it a factor that the jury should consider, and  
09:47:15 15 tell us -- tell us why?

09:47:16 16 A. So it's Georgia-Pacific Factor No. 8, and that factor  
09:47:20 17 relates to the commercial success of the products that use  
09:47:26 18 the patents. So not just the products that are accused,  
09:47:30 19 but all of the products that use the patents.

09:47:34 20 And as we've heard, GREE tried to use these  
09:47:37 21 patents in products, and those products weren't successful.

09:47:42 22 So what that means is that it's not the patents  
09:47:44 23 that are causing success, it's other things. And we've  
09:47:47 24 talked about what those other things are, the story line  
09:47:51 25 and content and the types of things that Mr. Sheppard

09:47:54 1 talked about on this slide.

09:47:56 2 Q. We've -- we've heard some questions from GREE about  
09:48:00 3 whether or not Supercell is trying to say it's excused from  
09:48:03 4 patent infringement because GREE has been unsuccessful. Is  
09:48:07 5 that your understanding of Supercell's position?

09:48:10 6 A. Of Supercell's position?

09:48:12 7 Q. Yeah.

09:48:13 8 A. No, I don't understand that to be Supercell's position.

09:48:15 9 Q. But the success or lack of success of GREE's games and  
09:48:20 10 their failure to use patented technology in their games,  
09:48:24 11 does that speak to whether or not there is value in these  
09:48:27 12 patents?

09:48:28 13 A. It does. That relates to a lack of value in these  
09:48:31 14 patents. The fact that GREE wasn't successful, despite  
09:48:35 15 trying to, what we say, commercialize products using these  
09:48:39 16 patents, that shows that the patents are not valuable.

09:48:45 17 Q. Let's talk about whether or not you looked at licenses  
09:48:47 18 in this case, Mr. Bakewell.

09:48:50 19 And tell the jury what you did in that regard.

09:48:53 20 A. So I did look at licenses. There's licenses that were  
09:48:57 21 produced by the parties.

09:48:59 22 Here they are on a slide. And as this shows on  
09:49:03 23 the right-hand side, they're all lump sums.

09:49:06 24 Q. Is that a question that you understand the jury may be  
09:49:08 25 asked ultimately as to whether or not a running royalty or

09:49:12 1 a lump sum is the appropriate form?

09:49:14 2 A. I understand that might be possible.

09:49:15 3 Q. And what is your opinion in that regard?

09:49:17 4 A. Well, the evidence shows that the type of -- of a  
09:49:22 5 royalty -- we call this the form of the royalty -- would be  
09:49:25 6 a lump sum.

09:49:26 7 So the licenses are actually lump sums, and then  
09:49:29 8 when you have a case like this where the features are a  
09:49:35 9 minor part, especially in the way we talk about, royalty in  
09:49:40 10 the form of a lump sum makes sense.

09:49:42 11 Q. Did you also in this case, sir, review this Japanese  
09:49:45 12 license between GREE and Supercell?

09:49:48 13 A. I did.

09:49:48 14 Q. And what was there factually of note that you think the  
09:49:53 15 jury should take note of related to that license?

09:49:56 16 A. Well, that was also a lump-sum agreement. It was for  
09:50:02 17 1,079 patents. And the total payment was four-and-a-half  
09:50:08 18 million dollars. And we've heard -- we heard about that  
09:50:11 19 license over the last couple of days.

09:50:13 20 Q. And do you agree with Dr. Becker that a license to the  
09:50:15 21 patented technology is, in fact, what y'all call  
09:50:18 22 Georgia-Pacific Factor No. 1? It's the first factor you  
09:50:21 23 should look at. Do you agree with him in that regard?

09:50:24 24 A. That's true.

09:50:25 25 Q. Now, before we wrap up here, to remind the jury what



09:50:29 1 you're doing -- what they're trying to do is put themselves  
09:50:33 2 at this hypothetical negotiation between GREE and  
09:50:36 3 Supercell, correct?

09:50:36 4 A. That's correct.

09:50:37 5 Q. And so we know that GREE is at that hypothetical  
09:50:42 6 negotiation table, correct?

09:50:43 7 A. Right.

09:50:43 8 Q. We also know that GREE was at this table to negotiate a  
09:50:46 9 license for the Japanese patents, correct?

09:50:49 10 A. That's correct.

09:50:50 11 Q. And we know exactly what GREE agreed to with respect to  
09:50:56 12 a thousand patents and unlimited use of those patents; is  
09:50:56 13 that fair?

09:51:01 14 A. We do. It's four-and-a-half million dollars.

09:51:03 15 Q. And I don't think we need to go through these in  
09:51:07 16 detail. But you've -- you've talked about these  
09:51:08 17 Georgia-Pacific factors as we've gone through today,  
09:51:12 18 correct, Mr. Bakewell?

09:51:13 19 A. That's right. We've talked about the -- those factors.  
09:51:15 20 I think the jury may see those in the -- in the jury  
09:51:19 21 instructions, and we -- that's the framework that I've  
09:51:21 22 used.

09:51:23 23 Q. And as we wrap up, Mr. Bakewell, this is where we  
09:51:25 24 started. When you say the -- the value of these patents is  
09:51:29 25 not significant, give the jury some indication of what

09:51:31 1 you're talking about from a monetary or money --

09:51:35 2 A. So, as I mentioned, the -- the term we use is

09:51:38 3 "de minimus." That means minimal. Like in a case like

09:51:42 4 this, the -- relative to the claims in the patents, that's

09:51:47 5 a number that's like less than \$5,000.00 per patent.

09:51:50 6 Q. Per patent, sir?

09:51:51 7 A. Correct.

09:51:53 8 MR. DACUS: That's all I have, Your Honor. I pass  
09:51:54 9 the witness.

09:51:55 10 THE COURT: Cross-examination by the Plaintiff?

09:51:57 11 MS. LUDLAM: Thank you, Your Honor.

09:52:02 12 And we have some notebooks to hand out, if we may  
09:52:06 13 approach.

09:52:06 14 THE COURT: You may approach.

09:52:07 15 MS. LUDLAM: Thank you.

09:52:15 16 THE WITNESS: Thank you.

09:52:16 17 COURT SECURITY OFFICER: Yes, sir.

09:52:25 18 THE COURT: You may proceed when you're ready,  
09:52:40 19 Ms. Ludlam.

09:52:41 20 MS. LUDLAM: Thank you, Your Honor.

09:52:41 21 CROSS-EXAMINATION

09:52:41 22 BY MS. LUDLAM:

09:52:41 23 Q. Good morning, Mr. Bakewell.

09:52:43 24 A. Good morning.

09:52:43 25 Q. It's good to see you again. We met at your deposition

09:52:46 1 back in June. Do you remember that?

09:52:48 2 A. By video.

09:52:49 3 Q. Yes.

09:52:51 4 Mr. Bakewell, when we met back in June, you told  
09:52:55 5 me that you had charged more than \$400,000.00 for the work  
09:52:59 6 that you have done for Supercell in the dispute between  
09:53:04 7 these parties; is that correct?

09:53:05 8 A. That's not exactly correct, no. There's -- this -- if  
09:53:15 9 you say disputes, that would be correct.

09:53:18 10 Q. Okay. So more than \$400,000.00 between the -- for the  
09:53:24 11 disputes between these parties, the work you've done for  
09:53:27 12 Supercell?

09:53:27 13 A. Related to disputes between these parties.

09:53:31 14 Q. And after all of that work, I understand you did  
09:53:34 15 upwards of a hundred hours on this case; is that correct?

09:53:37 16 A. Yes.

09:53:38 17 Q. Okay. And after all that work, you still haven't come  
09:53:42 18 here today with a number for this jury?

09:53:44 19 A. I just said it's less than \$5,000.00 per patents. It's  
09:53:49 20 de minimus.

09:53:50 21 Q. Less than \$5,000.00. Okay. And you understand that if  
09:53:53 22 Supercell infringes, the Court shall award damages adequate  
09:53:58 23 to compensate it for the infringement but in no event less  
09:54:04 24 than a reasonable royalty?

09:54:05 25 A. That's true.

09:54:06 1 Q. Okay.

09:54:08 2 MS. LUDLAM: Mr. Groat, could you please publish  
09:54:11 3 Slide No. 4 from Mr. Becker's report?

09:54:17 4 Q. (By Ms. Ludlam) Okay. And that's consistent with  
09:54:18 5 Title 35, United States Code, Section 2 -- 284, right?

09:54:24 6 A. Yes.

09:54:24 7 Q. And so is it really your opinion today that no -- in  
09:54:33 8 event no less than a reasonable royalty, it's only  
09:54:35 9 \$5,000.00 per patent?

09:54:37 10 A. Correct.

09:54:37 11 Q. Okay. And you -- you agree that Dr. Becker presented a  
09:54:45 12 royalty rate for each patent, correct?

09:54:46 13 A. Yes.

09:54:47 14 Q. Okay.

09:54:48 15 MS. LUDLAM: Mr. Groat, can you please pull up the  
09:54:51 16 last slide of Dr. Becker's presentation from yesterday?

09:54:56 17 Q. (By Ms. Ludlam) And you agree with -- I know you don't  
09:54:59 18 agree with his numbers, but you agree that Dr. Becker  
09:55:02 19 reached a specific opinion with respect to each and every  
09:55:06 20 patent, correct?

09:55:07 21 A. He did.

09:55:08 22 Q. And he has a specific royalty rate for each patent?

09:55:12 23 A. Yes.

09:55:13 24 Q. And he actually calculated down to the penny what the  
09:55:17 25 past damages would be for each case?

09:55:20 1 A. He did.

09:55:22 2 Q. Okay. But you don't have that kind of precision here  
09:55:25 3 today, do you?

09:55:26 4 A. I don't think I agree with that. I think there's  
09:55:33 5 something called false precision, if that's what you're  
09:55:37 6 suggesting, and that's a big issue. So I think my opinions  
09:55:41 7 are precise, and these are not precise for that reason.

09:55:44 8 Q. You just offered a round number for each patent?

09:55:46 9 A. That's true.

09:55:47 10 Q. All right. And, Mr. Bakewell, do you recall  
09:55:50 11 criticizing Dr. Neal for, in your words, not considering  
09:55:55 12 alternatives but, instead, surveying the removal of two  
09:55:58 13 features?

09:55:58 14 A. Yes.

09:55:59 15 Q. And you understand, however, Mr. Bakewell, that that's  
09:56:02 16 precisely what Supercell's own survey expert did, right?

09:56:06 17 A. No. I think that for three of the patents he focused  
09:56:16 18 on -- actually for all of them, he considered  
09:56:19 19 non-infringing alternatives.

09:56:20 20 MS. LUDLAM: Objection, Your Honor, not  
09:56:21 21 responsive.

09:56:22 22 THE COURT: After the witness said "no," that  
09:56:24 23 answers the question. I'll sustain the objection and  
09:56:26 24 strike the remainder of the response.

09:56:28 25 MS. LUDLAM: Thank you, Your Honor.

09:56:29 1 THE COURT: As you know -- as you know,  
09:56:31 2 Mr. Bakewell, Mr. Dacus will get a chance to ask more  
09:56:34 3 questions later, so limit your answers to the questions  
09:56:37 4 asked, please.

09:56:37 5 THE WITNESS: Yes, Your Honor.

09:56:38 6 THE COURT: Thank you.

09:56:39 7 Q. (By Ms. Ludlam) Mr. Klein surveyed simply the removal  
09:56:43 8 of the copy layout button, did he not?

09:56:45 9 A. For that feature, yes.

09:56:47 10 Q. Okay. So he did just survey the removal of a feature?

09:56:53 11 A. A feature.

09:56:54 12 Q. Correct. And you understand that the removal of the  
09:56:59 13 copy layout button is the only alternative that Supercell  
09:57:02 14 has offered in this case, correct?

09:57:05 15 A. Yes.

09:57:06 16 Q. And now you claim that these patents are not very  
09:57:15 17 valuable, in part because Supercell alleges there are  
09:57:20 18 alternatives, correct?

09:57:21 19 A. Correct.

09:57:22 20 Q. And for your assumption that there are non-infringing  
09:57:24 21 alternatives, you're relying on Supercell's technical  
09:57:28 22 experts, correct?

09:57:28 23 A. Yes.

09:57:28 24 Q. And if the jury disagrees with you and finds that those  
09:57:33 25 alternatives either infringe or are not non-infringing

09:57:36 1 alternatives, they should disregard your opinion on that  
09:57:40 2 aspect, correct?  
09:57:43 3 A. Just that aspect. There's other evidence that supports  
09:57:47 4 my conclusion, but --  
09:57:50 5 Q. Again --  
09:57:51 6 A. -- just that aspect, yes.  
09:57:53 7 Q. Okay. Thank you.  
09:57:53 8 And we just heard from Mr. -- we just heard  
09:57:57 9 Mr. Klein testify, right?  
09:57:58 10 A. We did.  
09:57:59 11 Q. And he didn't conduct a survey of the '137 or '481  
09:58:04 12 patents, correct?  
09:58:05 13 A. Correct.  
09:58:06 14 Q. And, Mr. Bakewell, you also told the jury all about  
09:58:11 15 this license between the parties in Japan, did you not?  
09:58:14 16 A. I did.  
09:58:17 17 Q. Now, to be clear, this is just a license in Japan,  
09:58:20 18 correct?  
09:58:20 19 A. Yes.  
09:58:22 20 Q. It is not a license in the United States?  
09:58:28 21 A. I'm going -- I'll assume that. I don't -- I'll --  
09:58:34 22 I'll -- that's what I've assumed; that's what I'll say.  
09:58:37 23 Q. Okay. And you understand that if this jury finds the  
09:58:40 24 patents in this case, the United States patents valid and  
09:58:43 25 infringed, its damages award would be for the United

09:58:47 1 States?

09:58:47 2 A. Correct.

09:58:49 3 Q. Okay. But you didn't tell the jury about Supercell's  
09:58:53 4 Japanese revenues with respect to the accused games, did  
09:58:56 5 you?

09:58:56 6 A. I did not.

09:58:58 7 MS. LUDLAM: Mr. Groat, could you please pull up  
09:59:01 8 PTX-690?

09:59:03 9 Q. (By Ms. Ludlam) Mr. Bakewell, have you seen this  
09:59:12 10 document before?

09:59:15 11 A. I believe so.

09:59:17 12 Q. And you understand that this is a document Supercell  
09:59:20 13 produced showing its revenues of the accused games in  
09:59:25 14 Japan; is that fair?

09:59:26 15 A. Yes.

09:59:26 16 Q. Okay. And are you aware that Supercell's U.S. revenues  
09:59:32 17 for these same three games is seven times that of in Japan?

09:59:37 18 A. That sounds right to me.

09:59:41 19 MS. LUDLAM: You can take that down, Mr. Groat.  
09:59:43 20 Thank you.

09:59:45 21 Q. (By Ms. Ludlam) Now, you also told the jury that the  
09:59:48 22 royalty in this case should be a lump sum, correct?

09:59:49 23 A. Yes.

09:59:50 24 Q. Okay. And with a lump sum, that means the parties pay  
09:59:56 25 one amount for the entire life of the patents, correct?



09:59:59 1 A. Correct.

09:59:59 2 Q. But you didn't tell the jury what these patents  
10:00:03 3 expired, did you?

10:00:04 4 A. I didn't mention that, that's correct.

10:00:07 5 Q. And so you didn't mention that none of the five patents  
10:00:11 6 in this case expire until 2034, correct?

10:00:15 7 A. That's true.

10:00:16 8 Q. So 14 years of additional life on all of these patents  
10:00:20 9 that they would have to account for under a lump sum?

10:00:23 10 A. That's how lump sum licenses work, that's correct.

10:00:28 11 Q. Okay. And the other thing you did not tell this jury  
10:00:32 12 was, as we were sitting here today, is that the copy layout  
10:00:35 13 feature that you said could simply be removed has never  
10:00:38 14 been removed, correct?

10:00:41 15 A. That's true. It has not been removed.

10:00:43 16 Q. Okay. And Mr. -- when Mr. Klein filed his report and  
10:00:47 17 told Supercell that he believed that more people would be  
10:00:50 18 interested in the game if that feature were removed,  
10:00:53 19 Supercell still didn't remove it, did they?

10:00:55 20 A. That's true.

10:00:56 21 Q. And even after they paid you for your report in this  
10:01:01 22 case suggesting that these features are no more valuable  
10:01:03 23 than \$5,000.00, they still didn't remove it, did they?

10:01:08 24 A. Correct.

10:01:09 25 Q. And, in fact, Supercell still hasn't implemented a

10:01:13 1 single alternative that you've discussed today, for any of  
10:01:16 2 the patents?

10:01:16 3 A. That's very true, correct.

10:01:23 4 Q. Now, Mr. Bakewell, were you here on Monday when you  
10:01:27 5 heard Dr. Becker testify?

10:01:29 6 A. Yes.

10:01:30 7 Q. Okay.

10:01:31 8 MS. LUDLAM: Ms. Lockhart, would you mind  
10:01:34 9 switching to the ELMO for me? Thank you very much.

10:01:38 10 Q. (By Ms. Ludlam) Now, I will tell you -- let's see --  
10:01:44 11 that, I don't know, did you hear Supercell's counsel talk  
10:01:47 12 about the evidence that the jury must consider --

10:01:52 13 A. Yes.

10:01:52 14 Q. -- during this case? And he said you have to consider  
10:01:56 15 the best evidence?

10:01:57 16 A. Correct.

10:01:57 17 Q. The most precise evidence?

10:01:59 18 A. He did.

10:02:00 19 Q. And all the evidence, correct?

10:02:02 20 A. He did, yes.

10:02:02 21 Q. Okay. And would you agree with me that with respect to  
10:02:05 22 the design of the copy layout feature that's in Clash of  
10:02:10 23 Clans, Supercell's design team likely knows a lot more  
10:02:15 24 about that feature than either you or I?

10:02:17 25 A. Oh, sure, of course.

10:02:18 1 Q. Okay. So if we're going to look for the best evidence  
10:02:21 2 or the most precise evidence and all the evidence relating  
10:02:25 3 to that feature, we'd need to consider what Supercell's  
10:02:27 4 designers said about it; is that fair?

10:02:30 5 A. That would be -- if you want to consider all of it,  
10:02:34 6 that would be part of it.

10:02:36 7 Q. Okay. Well, let's look at the evidence that you didn't  
10:02:38 8 tell the jury about.

10:02:40 9 MS. LUDLAM: Mr. Groat, could you please pull up  
10:02:43 10 PTX-72, please?

10:02:56 11 Oh, I'm sorry. Thank you, Ms. Lockhart.

10:02:59 12 And if you could, please scroll to Page 4,  
10:03:03 13 Mr. Groat. And there you see -- if you could blow up in  
10:03:12 14 the middle of the page a comment from Mr. Demirdjian.

10:03:16 15 Q. (By Ms. Ludlam) And you understand, Mr. Bakewell, that  
10:03:19 16 Mr. Demirdjian is a part of the Clash of Clans team?

10:03:22 17 A. Yes, I think we've heard that, or I understand that.

10:03:27 18 Q. Okay. And in the middle of that page, he says: I'm  
10:03:30 19 way too lazy to redo my base layout, and I wasn't alone in  
10:03:36 20 that sentiment. Started wondering if cloning an enemy base  
10:03:42 21 layout feature wouldn't not only be a great quality of life  
10:03:46 22 improvement, but it could also be one of those smaller  
10:03:50 23 improvements with bigger impact?

10:03:52 24 Do you see that?

10:03:53 25 A. I do.

10:03:54 1 Q. Okay. And you didn't show the jury this document, did  
10:03:56 2 you?

10:03:56 3 A. Correct, I did not.

10:03:57 4 Q. Okay.

10:03:57 5 MS. LUDLAM: You can take that down, Mr. Groat,  
10:04:00 6 thank you.

10:04:01 7 Could you please pull up PTX- -- oh, I'm sorry,  
10:04:03 8 we're going to go back to that and scroll down to Page 5  
10:04:08 9 towards the bottom. There we go.

10:04:10 10 Q. (By Ms. Ludlam) Mr. -- this is the same document,  
10:04:14 11 Mr. Bakewell. And towards the bottom, you'll see an entry  
10:04:18 12 from Mr. Immonen -- I probably butchered that name, I  
10:04:24 13 apologize. And do you -- could you read that first line  
10:04:27 14 for me, please?

10:04:29 15 A. You'd like for me to read it?

10:04:31 16 Q. Please.

10:04:32 17 A. It said: Copying a village layout would be a very --  
10:04:36 18 would be a very useful feature, copying layout manually is  
10:04:41 19 really pita.

10:04:43 20 Q. Okay. And -- and you understand, he was saying that  
10:04:47 21 having to build your own layout manually is a real pain,  
10:04:52 22 right?

10:04:52 23 A. That's what he was saying in that parentheses, yes.

10:04:56 24 Q. Okay. And -- and you didn't show the jury this, did  
10:04:58 25 you?

10:04:59 1 A. That's correct.

10:05:06 2 MS. LUDLAM: You can take that down, Mr. Groat.

10:05:09 3 Can you move to PTX-73, please?

10:05:12 4 Q. (By Ms. Ludlam) And, again, this is a Slack message,  
10:05:15 5 you understand, for Clash of Clans's team?

10:05:17 6 A. Yes.

10:05:18 7 Q. Okay.

10:05:19 8 MS. LUDLAM: And if we could go to Page 6, please.

10:05:23 9 The second bullet point under Ms. Appel, all the way down  
10:05:31 10 past Mr. Vorlick. Thank you.

10:05:38 11 Q. (By Ms. Ludlam) And, again, you see the question was:  
10:05:40 12 Copy layout, what do you think? And at the bottom, could  
10:05:43 13 you read what Mr. Vorlick said?

10:05:49 14 A. He said: It'd definitely save a lot of time and  
10:05:53 15 definitely be a big QoL improvement.

10:05:56 16 Q. Okay. And you also didn't show this to the jury today,  
10:05:59 17 did you?

10:05:59 18 A. Correct.

10:06:00 19 Q. Okay.

10:06:00 20 MS. LUDLAM: Thank you, Mr. Bakewell. No further  
10:06:05 21 questions.

10:06:05 22 THE COURT: You pass the witness, counsel?

10:06:06 23 MS. LUDLAM: Pass the witness.

10:06:07 24 THE COURT: Redirect, Mr. Dacus?

10:06:11 25 MR. DACUS: Thank you, Your Honor.

REDIRECT EXAMINATION

10:06:11 1

10:06:11 2

BY MR. DACUS:

10:06:14 3

Q. Let's pick up right there, Mr. Bakewell, on this copy

10:06:14 4

layout feature, the '594 patent and the Clash of Clans

10:06:16 5

game. You just saw those emails that Ms. Ludlam showed

10:06:20 6

you, correct?

10:06:20 7

A. I did.

10:06:21 8

Q. Both GREE and Supercell surveyed whether or not that

10:06:27 9

'594 feature had any impact on a game's playing time -- a

10:06:32 10

player's playing time in a game, correct?

10:06:35 11

A. Correct. Both companies did.

10:06:36 12

Q. And when you take all the evidence from GREE's survey,

10:06:39 13

what number did it come to?

10:06:40 14

A. Zero.

10:06:41 15

Q. And when you take Mr. Klein's survey, what number does

10:06:44 16

it come to?

10:06:44 17

A. Zero.

10:06:45 18

Q. So, regardless of what emails say, the two surveys say

10:06:49 19

the impact is zero; is that fair?

10:06:49 20

A. When you consider the pros and the cons, it nets out to

10:06:53 21

zero. That's what we talked about.

10:06:58 22

Q. Now, there was some discussion about whether or not

10:07:00 23

this '137 and '481 features were surveyed by Mr. Klein.

10:07:08 24

And they were not, correct?

10:07:09 25

A. That's true.

10:07:09 1 Q. Did you understand what he said as to why?

10:07:11 2 A. Yes.

10:07:12 3 Q. What did he say?

10:07:13 4 A. Well, Mr. Klein -- and he and I actually spoke about  
10:07:18 5 this at length. When you consider non-infringing  
10:07:20 6 alternatives, like I talked about at the beginning of my  
10:07:24 7 testimony, it's not perceptible to users, the changes you'd  
10:07:28 8 have to make to the ordering of the code or the steps that  
10:07:31 9 things would occur under, and so you couldn't survey that.

10:07:35 10 And he and I actually spoke about that at length  
10:07:40 11 and tried to figure out of a way that you could. But you  
10:07:44 12 can't. If users can't perceive that there's a difference  
10:07:47 13 from implementing a change, you can't survey that.

10:07:50 14 Q. Despite the fact that it's unsurveyable, Mr. Bakewell,  
10:07:55 15 is it your understanding that Dr. Becker actually used  
10:07:57 16 survey information of a different feature to come to his  
10:08:02 17 more than \$10 million in damages for those two patents?

10:08:05 18 A. Yes, he did.

10:08:06 19 Q. Do you think that's economically prudent?

10:08:10 20 A. I don't.

10:08:11 21 Q. Last question, sir. On this removal of these features,  
10:08:15 22 based on your experience, sir, is it a slippery slope to  
10:08:19 23 start down of removing features from your products or games  
10:08:22 24 when you're wrongfully accused of infringing somebody's  
10:08:26 25 patent?

10:08:26 1 A. Well, everybody, citizen or company, in this country  
10:08:30 2 has the right to stand up for themselves when they're  
10:08:34 3 accused of something that they don't think is -- is true,  
10:08:42 4 like -- that applies to all of us as citizens.

10:08:45 5 And if we're accused of something, sometimes --  
10:08:49 6 and it's wrong, sometimes we all decide in life to stand up  
10:08:52 7 for ourselves and over the principle of the -- of the  
10:08:58 8 issue. And that's why we have a rule of law and courts  
10:09:04 9 like this. That's the -- the way things work in this  
10:09:07 10 country.

10:09:07 11 And I think that's the slippery slope that you're  
10:09:12 12 talking about. You know, if you just give in when people  
10:09:16 13 accuse you of something wrongfully, well, what happens the  
10:09:20 14 next time and the next time? Sometimes you have to stand  
10:09:23 15 up for -- for your rights. And my understanding is that's  
10:09:26 16 why we're here.

10:09:27 17 MR. DACUS: That's all I have, Your Honor. I pass  
10:09:28 18 the witness. Thank you.

10:09:29 19 THE COURT: Further cross-examination?

10:09:31 20 MS. LUDLAM: No further questions, Your Honor.  
10:09:32 21 Thank you.

10:09:33 22 THE COURT: All right. You may step down,  
10:09:35 23 Mr. Bakewell.

10:09:35 24 THE WITNESS: Thank you, Your Honor.

10:09:40 25 THE COURT: Defendant, call your next witness.



10:09:44 1 MR. DACUS: Your Honor, at this time, Supercell  
10:09:47 2 rests its case.

10:09:49 3 THE COURT: All right. Ladies and gentlemen of  
10:09:51 4 the jury, both Plaintiff and Defendant have rested their  
10:09:54 5 case-in-chief. We're going to take a short recess. When  
10:09:58 6 we come back, we'll proceed with the Plaintiff's rebuttal  
10:10:01 7 case.

10:10:01 8 Please simply close your notebooks and leave them  
10:10:05 9 in your chairs. Follow all my instructions about your  
10:10:09 10 conduct during the trial, including, of course, not to  
10:10:11 11 discuss the case among yourselves, and we'll be back in  
10:10:14 12 here shortly to continue, as I say, with the Plaintiff's  
10:10:17 13 rebuttal case.

10:10:18 14 The jury is excused for recess.

10:10:21 15 COURT SECURITY OFFICER: All rise.

10:10:22 16 (Jury out.)

10:10:22 17 THE COURT: The Court stands in recess.

10:26:46 18 (Recess.)

10:26:49 19 (Jury out.)

10:26:49 20 COURT SECURITY OFFICER: All rise.

10:26:50 21 THE COURT: Be seated, please.

10:28:51 22 Mr. Moore, is the Plaintiff prepared to go forward  
10:28:58 23 with its rebuttal case?

10:29:00 24 MR. MOORE: Yes, Your Honor, we are.

10:29:01 25 THE COURT: And who do you intend to call as your

10:29:05 1 first rebuttal witness?

10:29:06 2 MR. MOORE: Dr. Robert Akl, and he will be our  
10:29:09 3 only rebuttal witness.

10:29:11 4 THE COURT: All right. Mr. Dacus, you're  
10:29:13 5 standing. Do you have something before I bring the jury  
10:29:15 6 in?

10:29:15 7 MR. DACUS: If I might, Your Honor. I was just  
10:29:19 8 wondering if the Court would be kind enough to give us an  
10:29:22 9 update on how much time we have left, if that's possible.

10:29:26 10 THE COURT: Just a minute.

10:29:27 11 MR. DACUS: Thank you.

10:29:27 12 THE COURT: According to the Court's calculations,  
10:29:40 13 the Plaintiff has remaining 1 hour and 14 minutes. The  
10:29:46 14 Defendant has 23 minutes remaining.

10:29:48 15 MR. DACUS: Thank you very much, Your Honor.

10:29:49 16 THE COURT: Let's bring in the jury, please,  
10:29:51 17 Mr. Fitzpatrick.

10:29:52 18 COURT SECURITY OFFICER: Yes, sir.

10:29:52 19 All rise.

10:29:54 20 (Jury in.)

10:29:55 21 THE COURT: Please be seated.

10:30:18 22 As I indicated, ladies and gentlemen, we'll now  
10:30:26 23 proceed with the Plaintiff's rebuttal case.

10:30:27 24 Plaintiff, call your first witness.

10:30:30 25 MR. MOORE: Thank you, Your Honor.

10:30:31 1 For its first witness, Plaintiff would recall to  
10:30:34 2 the stand Dr. Robert Akl.

10:30:35 3 THE COURT: All right. Dr. Akl, if you'll return  
10:30:37 4 to the witness stand. And I remind you, sir -- remind you,  
10:30:40 5 sir, you remain under oath.

10:30:43 6 THE WITNESS: Yes, Your Honor.

10:30:48 7 THE COURT: Are there binders to distribute,  
10:30:51 8 counsel?

10:30:51 9 MR. MOORE: Yes, Your Honor. May we do that now?

10:30:54 10 THE COURT: Let's do that now.

10:30:56 11 MR. MOORE: Thank you.

10:31:10 12 THE COURT: All right. You may proceed,  
10:31:12 13 Mr. Moore.

10:31:13 14 MR. MOORE: Thank you, Your Honor.

10:31:13 15 Before I do so, we are almost immediately going to  
10:31:16 16 get into the Supercell's confidential source code, and so I  
10:31:21 17 would ask if the Court would seal the courtroom. Our  
10:31:23 18 client representatives have already remained outside.

10:31:26 19 THE COURT: All right. Based on counsel's request  
10:31:28 20 and their representations, I'll order the courtroom sealed  
10:31:31 21 at this time.

10:31:32 22 Anyone present not subject to the protective order  
10:31:36 23 that's been entered in this case should excuse themselves  
10:31:39 24 and remain outside the courtroom until it is unsealed.

10:31:43 25 (Courtroom sealed.)

10:31:43 1 (This portion of the transcript is sealed  
10:31:43 2 and filed under separate cover as  
10:31:44 3 Sealed Portion No. 6.)  
11:09:29 4 (Courtroom unsealed.)  
11:09:29 5 THE COURT: The courtroom is unsealed.  
11:10:00 6 You may continue.  
11:10:02 7 MR. MOORE: Thank you, Your Honor.  
11:10:03 8 Q. (By Mr. Moore) All right. Let's turn to the prior art  
11:10:04 9 that Mr. Friedman showed the jury relating to the battle  
11:10:10 10 patents. Do you recall him testifying about these games  
11:10:16 11 Magic and BattleForge yesterday?  
11:10:17 12 A. Yes.  
11:10:17 13 Q. Now, first of all, did you see any source code from  
11:10:17 14 those games?  
11:10:18 15 A. No.  
11:10:18 16 Q. And what impact does that have on your opinions about  
11:10:22 17 whether the prior art could possibly invalidate the battle  
11:10:26 18 patents?  
11:10:26 19 A. For infringement we look a lot at source code, because  
11:10:27 20 even when you see a video sometimes, the video isn't clear  
11:10:28 21 what is happening until we go to the source code. So  
11:10:31 22 without source code, even if we have a video or manual,  
11:10:34 23 it's very difficult to truly assess what the disclosure is.  
11:10:42 24 Q. All right.  
11:10:43 25 MR. MOORE: Now, Mr. Groat, could you please pull

11:10:46 1 up the Dr. Claypool trial testimony from yesterday?

11:10:52 2 Q. (By Mr. Moore) And you heard that testimony, correct,  
11:10:55 3 Dr. Akl?

11:10:55 4 A. Yes.

11:10:55 5 Q. All right. Do you recall that -- this is at Page 44 of  
11:10:55 6 the transcript?

11:11:07 7 MR. MOORE: You can go ahead and blow up, please,  
11:11:09 8 Lines 17 to 25, thank you, that's perfect.

11:11:13 9 Q. (By Mr. Moore) Do you recall Dr. Claypool giving the  
11:11:15 10 testimony shown here beginning at Line 17?

11:11:18 11 A. Yes.

11:11:18 12 Q. And what in this answer helps inform your testimony  
11:11:22 13 about why the source code would be relevant to the prior  
11:11:25 14 art games?

11:11:25 15 A. Right. So he says: The code is actually what happens.  
11:11:30 16 The interface and the demos and the videos and the use  
11:11:33 17 gives you a sort of high-level confidence. But to know  
11:11:38 18 what's happening, you go to the source code.

11:11:40 19 MR. MOORE: If we could scroll down a little bit.

11:11:43 20 Q. (By Mr. Moore) Do you see what he says there at the  
11:11:46 21 top of the next page?

11:11:47 22 A. Yes.

11:11:47 23 Q. Now, you understand he wasn't talking about the prior  
11:11:50 24 art when he talked about -- when he gave this testimony?

11:11:53 25 A. Correct.

11:11:53 1 Q. He was talking about Clash of Clans, I think?

11:11:55 2 A. Yes.

11:11:55 3 Q. But is it also true for the prior art that we're  
11:11:58 4 looking at?

11:11:58 5 A. Yes, my understanding is the standard is the same.

11:12:02 6 When you're looking for infringement and you're looking at  
11:12:04 7 prior art, you do the same thing.

11:12:08 8 Q. All right. Thank you.

11:12:09 9 MR. MOORE: Go back to our slides, please.

11:12:12 10 Q. (By Mr. Moore) Now, is the burden of proof relevant to  
11:12:14 11 the question of invalidity, as well?

11:12:15 12 A. Yes.

11:12:16 13 Q. And how so?

11:12:17 14 A. The burden of proof -- it's the Defendant's burden of  
11:12:19 15 proof by clear and convincing evidence. It's what's  
11:12:24 16 required for invalidity.

11:12:25 17 Q. And is that a higher burden of proof than the one that  
11:12:28 18 applies to the Plaintiff to show infringement?

11:12:30 19 A. Yes. So for infringement it's preponderance of the  
11:12:33 20 evidence.

11:12:33 21 Q. What is your understanding of why the Defendant has a  
11:12:37 22 higher burden of proof for invalidity than the Plaintiff  
11:12:39 23 does for infringement?

11:12:40 24 A. Because the patents first are assumed to be valid.

11:12:44 25 They've already gone through an examination by the Patent

11:12:46 1 Office, and the examiner allowed the patents. So there's  
11:12:50 2 been a process in place.

11:12:52 3 Q. All right. Even from what you were able to look at  
11:12:55 4 regarding Magic and BattleForge, did you find claim  
11:13:01 5 elements in the -- in the battle patents that were not  
11:13:04 6 present in those games?

11:13:05 7 A. I did.

11:13:06 8 MR. MOORE: And let's -- let's --

11:13:08 9 Q. (By Mr. Moore) Start with BattleForge, which claim  
11:13:10 10 elements are we discussing here that you found to be  
11:13:13 11 missing from BattleForge?

11:13:14 12 A. Element 1h and 14h, and Element d of Claim 1 in the  
11:13:22 13 '481 patent -- sorry, Element 1h and 14h of the '137  
11:13:26 14 patent.

11:13:26 15 Q. Okay. And do you have -- are there two reasons that  
11:13:32 16 you list here why this claim element is not present?

11:13:35 17 A. Yes.

11:13:36 18 Q. All right. Start with the second one, actually. No  
11:13:38 19 appropriate timing. Do you recall that the Court has  
11:13:41 20 construed this claim term as at a predetermined time?

11:13:45 21 A. Yes.

11:13:45 22 Q. And do you recall Mr. Friedman's testimony that in  
11:13:48 23 BattleForge, he believed that the power was restored at a  
11:13:52 24 constant rate?

11:13:53 25 A. Correct.

11:13:54 1 Q. And is that accurate?

11:13:55 2 A. No. The -- if you remember, the BattleForge game had  
11:14:00 3 the little power and it was a little circle in the top  
11:14:03 4 right. It's actually not -- it's restored at variable  
11:14:07 5 times.

11:14:07 6 Q. And is there anything in Mr. Friedman's own report that  
11:14:10 7 supports your opinion on that?

11:14:11 8 A. Yeah, he states that in his own report.

11:14:14 9 MR. MOORE: Can we pull up, please, Mr. Friedman's  
11:14:16 10 opening report at Page 1 -- 138 -- I'm sorry, yes, 138 of  
11:14:23 11 the PDF. And if you go to the next page, actually, scroll  
11:14:25 12 down to the bottom of this Paragraph 260. Keep going a  
11:14:32 13 little bit more.

11:14:32 14 Q. Do you see about three lines up before the image the  
11:14:36 15 sentence begins second?

11:14:39 16 A. Yes.

11:14:39 17 Q. And what -- does that support your opinion that in  
11:14:42 18 BattleForge, it is at a variable rate the power is  
11:14:45 19 restored?

11:14:46 20 A. Yes. So power is this number here, the 50 in this  
11:14:49 21 example. And power is returned to the player from the void  
11:14:54 22 at a variable rate based on a percentage of power  
11:14:59 23 previously spent.

11:14:59 24 Q. And does that mean that Supercell has shown that this  
11:15:02 25 game restores points at a predetermined time?



11:15:06 1 A. No.

11:15:08 2 Q. Okay.

11:15:09 3 MR. MOORE: You may take that down, thank you.

11:15:11 4 Q. (By Mr. Moore) Now, regarding the -- the sequence  
11:15:13 5 issue of select, subtract, and add, you were here yesterday  
11:15:17 6 when I walked Mr. Friedman through his own expert report on  
11:15:20 7 this issue?

11:15:21 8 A. Yes.

11:15:22 9 Q. And remind us, please, what -- what did he write in his  
11:15:25 10 report about this sequence issue?

11:15:26 11 A. So we were talking a lot about the sequence where the  
11:15:29 12 claims require a specific sequence.

11:15:32 13 In BattleForge, if the player starts with 91 power  
11:15:37 14 and then they place a card that's 50 power, what happens  
11:15:42 15 actually the -- following the placement, so after you've  
11:15:48 16 played your card, you actually get more power. So it goes  
11:15:53 17 up by 4, and then you get the subtraction. And so the  
11:15:56 18 sequence does not follow the required sequence in the  
11:15:58 19 claims.

11:15:58 20 Q. So in BattleForge, it's select, add, subtract, instead  
11:16:03 21 of select, subtract, and add?

11:16:06 22 A. Yes.

11:16:09 23 Q. Now, looking at the remove and upstate -- update steps  
11:16:14 24 of Claims 2 and 15 of the '137 and Claim 1 of the '481, did  
11:16:20 25 Mr. Friedman and Supercell show that BattleForge had these

11:16:25 1 claim elements?

11:16:26 2 A. No.

11:16:26 3 Q. All right. And did you see anything -- strike that?

11:16:29 4 MR. MOORE: Mr. Groat, could you please pull up  
11:16:33 5 Mr. Friedman's report again at Page 183 and zoom in on the  
11:16:39 6 image?

11:16:39 7 Q. (By Mr. Moore) These are the claim elements that  
11:16:42 8 require that when a player plays the game content, it's  
11:16:46 9 removed from their hand and then a new one is added; is  
11:16:48 10 that right?

11:16:48 11 A. Yes.

11:16:49 12 MR. MOORE: Could you go to the -- I'm sorry, I  
11:16:51 13 think it's going to be at 176 instead. Go -- go back a  
11:17:04 14 little bit. Okay. Go forward, sorry, keep -- keep going.  
11:17:10 15 It should be the document Page 144, so go forward three  
11:17:15 16 pages.

11:17:19 17 Q. (By Mr. Moore) All right. Well, we're having some  
11:17:23 18 difficulties with this?

11:17:24 19 Let me just ask you, could you please describe  
11:17:25 20 what -- how the hand of cards is shown in BattleForge and  
11:17:28 21 why there's no removal and update.

11:17:31 22 A. So BattleForge, at the bottom, you had your cards, and  
11:17:35 23 they stayed there. So even when you played a card at the  
11:17:38 24 bottom -- if we can blow up this part here in red.

11:17:42 25 So this is a screenshot from BattleForge, and you

11:17:45 1 had your cards at the bottom, and the cards are not removed  
11:17:48 2 after you play them. They -- you know, they're shown a  
11:17:51 3 little smaller, but they're still there. They're --  
11:17:53 4 they're not gone. You don't get another card in their  
11:17:56 5 place. So that claim element is not met.

11:18:00 6 Q. All right. Thank you.

11:18:00 7 MR. MOORE: Go back to our slides, please.

11:18:02 8 Q. (By Mr. Moore) And let's talk about the Magic game.

11:18:05 9 Now, what are the claim -- what's -- what's the  
11:18:11 10 first claim element that's not present in the Magic game  
11:18:13 11 from the battle patents?

11:18:14 12 A. First, there's no server.

11:18:15 13 Q. How do you know that?

11:18:16 14 A. There is nothing related to a server in the game.

11:18:20 15 Q. All right.

11:18:21 16 MR. MOORE: Can you go to the next slide, please?

11:18:23 17 Q. (By Mr. Moore) And is there anything in the manual  
11:18:25 18 that you were shown that says that?

11:18:27 19 A. Yes.

11:18:29 20 Q. And what is that?

11:18:29 21 A. So the game itself is describing the -- you know, it  
11:18:33 22 may be in the future. It says: Soon enough, their game  
11:18:39 23 will act as a platform in which players can play over the  
11:18:42 24 Internet.

11:18:42 25 Q. But did this 1997 Magic game that Supercell relied on

11:18:47 1 actually connect to the Internet and to a server?

11:18:49 2 A. No, and even if it describes connection to the

11:18:52 3 Internet, you can have multiplayer without a server. So

11:18:55 4 you can have two computers connect to each other and play.

11:18:59 5 So even when this feature comes in, it doesn't necessarily

11:19:05 6 mean there's going to be a server anyway.

11:19:06 7 Q. Is that the peer-to-peer arrangement that we talked

11:19:09 8 about last week?

11:19:10 9 A. Yes.

11:19:10 10 Q. All right. What's the next claim element that's not

11:19:13 11 present in Magic?

11:19:15 12 A. Element 1b, 1c, 14b, and 14c of the '137 patent, and

11:19:22 13 Element 1a of the '481 patent.

11:19:27 14 Q. And these are the elements that require plural kinds of

11:19:31 15 player characters, correct?

11:19:32 16 A. Yes.

11:19:32 17 Q. Why are there no player characters in Magic?

11:19:37 18 A. Because all you have are cards, and then when you

11:19:39 19 select and deploy a card, it stays a card. There is no

11:19:44 20 player character in that game. You start with a card, you

11:19:46 21 end with a card, and all you have are cards.

11:19:48 22 MR. MOORE: Could we please, Mr. Groat, pull up

11:19:51 23 DX-566 at Page 114 and blow up the image there?

11:20:05 24 Q. (By Mr. Moore) What is shown here?

11:20:10 25 A. So you have cards and you -- you deploy cards and

11:20:14 1 select cards, but everything is just a card. There is

11:20:17 2 no -- there is no player character.

11:20:21 3 Q. And is that different from Clash Royale, for example,

11:20:23 4 where the cards will turn into these characters that will

11:20:26 5 walk across the battlefield?

11:20:28 6 A. Yes.

11:20:29 7 Q. All right. What is the next element that is not

11:20:33 8 present in the Magic game?

11:20:35 9 A. So when we talk about -- when we talk about player

11:20:40 10 cards -- sorry, player characters, it's also enemy

11:20:45 11 characters. So on both sides, there are no -- on your side

11:20:47 12 or the other side.

11:20:48 13 Q. All right. And then let's move ahead to Element h?

11:20:51 14 A. Yes.

11:20:51 15 Q. What is -- why is this element not present?

11:20:53 16 A. You have no sequence and predetermined timing. So the

11:20:57 17 sequence is -- is also incorrect or not -- does not mirror

11:21:00 18 what's required by the claim. And there is no

11:21:02 19 predetermined timing.

11:21:03 20 Q. And why is that true?

11:21:05 21 A. Because in the game, the way you get mana -- in the

11:21:14 22 game we call it mana -- is you click on the land cards.

11:21:18 23 Q. How do you -- well, strike that.

11:21:21 24 When do you click on the land cards in comparison

11:21:25 25 to the sequence of how you're going to play your character

11:21:28 1 card?

11:21:29 2 A. So the user selects when they want to get the mana. So  
11:21:33 3 it's not that it's at a predetermined time where the  
11:21:35 4 computer or the game is giving you a specific amount of  
11:21:39 5 Elixir or mana in this game. You decide when you want to  
11:21:44 6 play a card to get mana and when you want more mana or less  
11:21:47 7 mana.

11:21:48 8 MR. MOORE: Could you please go to DX-566 again at  
11:21:51 9 Page 121? And blow up the first three paragraphs.

11:22:03 10 Q. (By Mr. Moore) If you could look at the middle  
11:22:06 11 paragraph of the Magic manual. Does that help support your  
11:22:11 12 opinion?

11:22:11 13 A. Yes, yes.

11:22:12 14 Q. How so?

11:22:13 15 A. So it says that you click on a highlighted card in your  
11:22:16 16 hand to begin casting the spell, or in the case of land, to  
11:22:20 17 put it into play. That's the land card that's going to  
11:22:23 18 give you mana.

11:22:24 19 Once you've selected a spell to cast, you must  
11:22:27 20 draw enough mana from your mana pool, land in play, or  
11:22:31 21 other mana-producing cards to power your spell.

11:22:34 22 Q. So is the player drawing mana doing the add step in the  
11:22:38 23 sequence?

11:22:38 24 A. Yes. So you want to play a card, you tap, for example,  
11:22:42 25 the land card to get mana, and then you can play the card.

11:22:46 1 So it's the -- a different sequence than what the claim  
11:22:50 2 requires.

11:22:50 3 Q. It's select, add, subtract, instead of the required  
11:22:55 4 ones?

11:22:55 5 A. Yes.

11:22:55 6 Q. All right. Now -- and how does the player selecting --  
11:23:00 7 deciding to select mana or to -- to draw mana affect the  
11:23:04 8 predetermined timing issue?

11:23:05 9 A. So because a player decides when I want to get my mana,  
11:23:08 10 not only does that make it out of sequence, but it also  
11:23:11 11 makes it not meet the predetermined time that's also  
11:23:16 12 required by the claim.

11:23:18 13 Q. Okay. Now, did you hear --

11:23:20 14 MR. MOORE: Thank you. You may take that down.

11:23:22 15 Q. (By Mr. Moore) Did you hear Mr. Friedman's opinion  
11:23:25 16 that it would be -- would have been obvious to combine  
11:23:30 17 Magic and BattleForge?

11:23:30 18 A. Yes, I heard his opinion.

11:23:31 19 Q. Do you agree with that?

11:23:33 20 A. No.

11:23:33 21 Q. Why not?

11:23:34 22 A. Because when you want to combine two references, the  
11:23:37 23 legal principles teach us that you're not supposed to use  
11:23:40 24 hindsight. So I can't take the patent itself and use it as  
11:23:44 25 a recipe and see how I can find all these pieces in

11:23:50 1 multiple pieces of prior art and put them together.

11:23:53 2           The correct process is to forget the patent for a  
11:23:57 3 second. And if I put myself in the shoes of a person of  
11:24:01 4 ordinary skill, would that person have combined these two  
11:24:04 5 references together to get the claimed invention?

11:24:09 6           And -- and really there is no reason. The -- the  
11:24:12 7 games were 12 years apart. There wasn't a problem in one  
11:24:15 8 of the games that the other game would have fixed. So  
11:24:20 9 the -- the motivation to combine that Supercell puts  
11:24:25 10 forward is an incorrect analysis.

11:24:27 11 Q. In addition to there being no motivation to combine, do  
11:24:31 12 each of these claims -- I'm sorry, in addition to there  
11:24:34 13 being no motivation to combine, are each of these games  
11:24:38 14 missing some of the elements of the battle patent claims?

11:24:40 15 A. Yes. So they're missing them separately, so there's no  
11:24:44 16 anticipation; and they're missing them together, so there  
11:24:48 17 is no obviousness.

11:24:49 18 Q. Thank you.

11:24:50 19           Let's move on to the donation patent. And did you  
11:24:54 20 hear Dr. Zagal's testimony about that yesterday?

11:24:56 21 A. Yes.

11:24:57 22 Q. And let me skip ahead to the next slide.

11:25:00 23           What -- what do you recall him saying about this  
11:25:03 24 display data element?

11:25:04 25 A. So he is disputing that you can select cards possessed



11:25:11 1 from your own cards, that -- when -- when you look at the  
11:25:17 2 claim language.

11:25:17 3 Q. Okay. Let's back up and look at that.

11:25:19 4 Is this -- which element are we talking about  
11:25:22 5 there?

11:25:22 6 A. We're looking at Element b. For example, the claim  
11:25:25 7 says: First object -- the display data for selecting first  
11:25:25 8 object from the possessed objects possessed by the first  
11:25:33 9 user, and then you need to select a second user from the  
11:25:38 10 plurality of users. That's one of his dispute.

11:25:39 11 Q. And why do you disagree with him on that?

11:25:42 12 A. So he's saying that because -- for example, a user can  
11:25:46 13 create a wish list. So, for example, Voxel wants the bat  
11:25:51 14 card. I don't have a choice to meet the claim language,  
11:25:56 15 but the claim language says I need to select one card from  
11:25:59 16 my own possessed cards.

11:26:01 17 And so I can select this card, or I can select  
11:26:03 18 that card. So I am still meeting what the claim requires,  
11:26:10 19 even though someone may have provided me a wish list.

11:26:12 20 Q. Are you still also selecting the user to receive the  
11:26:15 21 card?

11:26:16 22 A. Yes. So I can select this user. I can select the  
11:26:18 23 card. I can select this -- the bat card with the Voxel.

11:26:23 24 And so when I hit donate, I am selecting a card  
11:26:28 25 from the list of possessed cards. And I am selecting a

11:26:31 1 user from the list of users. So I am making that  
11:26:34 2 selection.

11:26:34 3 Q. Okay. Now, do you recall also Dr. Zagal arguing that  
11:26:40 4 because a player has to choose to upgrade a card and also  
11:26:43 5 pay gold to do so, there's no infringement?

11:26:45 6 A. Yes.

11:26:48 7 MR. MOORE: And could we please pull up PTX-3, the  
11:26:51 8 donation patent? And go to Figure 7B -- just page forward  
11:27:13 9 if you would, please.

11:27:21 10 Q. (By Mr. Moore) Okay. Do you recall seeing this  
11:27:23 11 flowchart a few times yesterday?

11:27:25 12 A. Yes.

11:27:25 13 Q. First of all, do we look at whether a claim element is  
11:27:29 14 met and infringed by looking at the figures of the patent?

11:27:32 15 A. No. We don't compare the figure to the accused  
11:27:35 16 product. We compare the claims to the accused product.

11:27:38 17 Q. All right. And then -- so then why does Clash Royale  
11:27:40 18 infringe the claims of the donation patent, despite the  
11:27:45 19 fact a user has to choose to upgrade and also spend gold?

11:27:48 20 A. So just because you can add another requirement or  
11:27:51 21 another restriction, does not get you out of infringement,  
11:27:55 22 as long as you still do what the infringement requires.

11:27:57 23 So -- otherwise, it would be very easy to get out  
11:28:01 24 of infringement. You just -- everybody would just add an  
11:28:06 25 extra step that may or may not be important.

11:28:08 1 So you still are meeting the claim language even  
11:28:11 2 if there are extra steps that aren't required by the claim.  
11:28:14 3 Q. All right. And do you also recall Dr. Zagal talking  
11:28:20 4 about how he believes an upgraded card is not a second  
11:28:23 5 object?  
11:28:25 6 A. Yes.  
11:28:25 7 Q. And why do you disagree with him on that?  
11:28:27 8 A. So it is a different object. It is a second object.  
11:28:28 9 It's a different level. It has different points. And in  
11:28:29 10 computer science, everything is stored in a variable.  
11:28:33 11 So when you get a new object, the fact that it is  
11:28:36 12 a new card with new numbers and new levels, meets the claim  
11:28:40 13 language.  
11:28:40 14 Q. All right.  
11:28:41 15 MR. MOORE: Could you go to Slide 31, please,  
11:28:45 16 Mr. Groat? Thank you.  
11:28:46 17 Q. (By Mr. Moore) So what is your opinion on infringement  
11:28:49 18 for the donation patent?  
11:28:52 19 A. That the patent infringes the game --  
11:28:55 20 Q. Other way around.  
11:28:56 21 A. Or the game infringes the patent.  
11:28:58 22 Q. Thank you.  
11:29:00 23 This is Clash Royale, correct?  
11:29:01 24 A. Yes.  
11:29:02 25 Q. All right. Now, you also recall testimony on

11:29:05 1 FarmVille?

11:29:05 2 A. Yes.

11:29:05 3 Q. And does FarmVille anticipate or -- or invalidate the  
11:29:10 4 '655 patent?

11:29:10 5 A. No.

11:29:10 6 Q. Why not?

11:29:11 7 A. Because the -- for a couple of different reasons.

11:29:15 8 There is no sending display data for selecting a first  
11:29:20 9 object and a second user. So there is a requirement in the  
11:29:22 10 claim, which is not met by the game.

11:29:24 11 MR. MOORE: Could you please bring up DX-561,  
11:29:29 12 Mr. Groat, and -- and go to Page 85?

11:29:31 13 Q. (By Mr. Moore) And did you review the FarmVille for  
11:29:33 14 Dummies book?

11:29:33 15 A. Yes.

11:29:34 16 Q. And I'll show you that?

11:29:38 17 MR. MOORE: I'm sorry. 561. Thank you.

11:29:44 18 Go to Page 85 [sic], please. All right. Please  
11:29:49 19 pull up that image.

11:29:51 20 Q. (By Mr. Moore) Why does this image on Page 85 [sic]  
11:29:54 21 support your opinion that the display data element is not  
11:29:57 22 met?

11:29:57 23 A. Because there are no pictures of users. You cannot  
11:30:00 24 select users on this display image. You can only select  
11:30:04 25 items.

11:30:04 1 Q. All right. Where do you have to go to select the user?

11:30:06 2 A. You have to go somewhere else.

11:30:08 3 Q. Okay.

11:30:08 4 MR. MOORE: Could you go back to the slides,  
11:30:11 5 please?

11:30:11 6 Q. (By Mr. Moore) Is there another claim element that is  
11:30:13 7 not present in FarmVille?

11:30:14 8 A. Yes.

11:30:15 9 Q. Which one is that?

11:30:16 10 A. Element 1e and 7e of the '655 patent.

11:30:23 11 Q. And why are they not present?

11:30:25 12 A. There is no determination that's made in response to  
11:30:27 13 request to -- for transfer.

11:30:29 14 Q. What does that mean?

11:30:29 15 A. It means that the user has to accept versus the fact  
11:30:35 16 that you send it and they get it.

11:30:37 17 Q. Okay.

11:30:38 18 A. And it expires after two weeks, so if you don't accept,  
11:30:41 19 it goes away.

11:30:42 20 Q. Right. So, for example, if you compare on the  
11:30:43 21 infringement side in Clash Royale, what happens if you  
11:30:44 22 donate a card? Does the user have to accept?

11:30:46 23 A. No.

11:30:46 24 Q. All right. And in FarmVille, does the user have to  
11:30:49 25 accept?

11:30:49 1 A. Yes.

11:30:49 2 MR. MOORE: Let's go to, please, DX-561 at  
11:30:54 3 Page 86 [sic], and blow up the bottom part there.

11:31:01 4 Q. (By Mr. Moore) And do you remember that I walked  
11:31:02 5 through this yesterday with Dr. Zagal?

11:31:04 6 A. Yes.

11:31:04 7 Q. And did -- did you hear him talk about that in his  
11:31:07 8 direct testimony?

11:31:08 9 A. Yes.

11:31:08 10 Q. This aspect? I'm sorry, in his testimony, yes?

11:31:11 11 Okay. And why does the fact that the user has to  
11:31:14 12 accept, mean that FarmVille doesn't meet this claim  
11:31:16 13 element?

11:31:17 14 A. Because if a user doesn't accept, then you -- you  
11:31:23 15 wouldn't have done the transfer. So it would -- it's not  
11:31:25 16 what the claim requires.

11:31:26 17 Q. And what happens after two weeks if the user never  
11:31:29 18 accepts?

11:31:30 19 A. The -- the gift is not given to the user. So you --  
11:31:36 20 you can't -- you can't end up with a gift after that point  
11:31:38 21 in time.

11:31:39 22 Q. Okay. So what is your opinion about whether FarmVille  
11:31:42 23 invalidates the '655 patent donation patent?

11:31:44 24 A. FarmVille does not.

11:31:45 25 MR. MOORE: All right. Let's move back to our

11:31:48 1 slides, please, No. 36.

11:31:52 2 Q. (By Mr. Moore) Finally, we have the -- the '873  
11:31:53 3 patent. What do you understand that Dr. Zagal disputes  
11:31:59 4 regarding infringement by Brawl Stars of the '873?

11:32:02 5 A. Claim -- Element c of Claim 8 and Element c of Claim 10  
11:32:06 6 of the '873 patent.

11:32:06 7 Q. All right. And you understand he has two different  
11:32:08 8 issues with that element?

11:32:10 9 A. Yes.

11:32:11 10 Q. What is the first issue?

11:32:12 11 A. So the element is: Control the display to display a  
11:32:16 12 frame indicative of shooting effective range in accordance  
11:32:20 13 with the first touch operation.

11:32:22 14 So it's the first touch operation that he  
11:32:23 15 disputes.

11:32:23 16 Q. All right. Now, let's -- let's -- remind us, please --

11:32:27 17 MR. MOORE: Mr. Groat, could you put up PDX-2 at  
11:32:32 18 Slide 162 -- I'm sorry, Slide 161, and go --

11:32:39 19 Q. (By Mr. Moore) So this is the element --

11:32:41 20 MR. MOORE: I'm sorry, go to the next slide.

11:32:43 21 Q. (By Mr. Moore) And is this the claim construction that  
11:32:45 22 the Court presented for -- or entered for touch operation?

11:32:47 23 A. Yes.

11:32:48 24 Q. And what does that require?

11:32:49 25 A. So the Court's construction, this requires operation

11:32:54 1 that involves the user's finger or other object, such as a  
11:32:58 2 stylus on the touch panel.

11:33:00 3 Q. And why does Dr. Zagal say that there's no first touch  
11:33:03 4 operation under this construction when a player uses the  
11:33:06 5 feature in Brawl Stars that you believe infringes?

11:33:08 6 A. Right. So if you remember, the cone only appears -- so  
11:33:12 7 the first touch operation is the touch and drag or the  
11:33:16 8 swipe.

11:33:16 9 Now, Dr. Zagal disagrees that touch and swipe is a  
11:33:22 10 first touch operation. And I disagree with his opinion  
11:33:28 11 because you can't swipe in the air. You have to touch to  
11:33:34 12 swipe. So the fact that you touch and swipe, and I'm  
11:33:37 13 saying you have to touch and swipe, I'm just being precise,  
11:33:40 14 you cannot swipe in the air. So the touch and swipe  
11:33:43 15 operation is the first touch operation.

11:33:48 16 Q. All right. And do you recall Dr. Zagal showing a page  
11:33:51 17 from -- I think it's an Apple document on iPads?

11:33:54 18 A. Yes.

11:33:54 19 Q. Does that support your opinion about this being a first  
11:33:57 20 touch operation?

11:33:57 21 A. Yes.

11:33:58 22 Q. Why?

11:34:00 23 A. Because the same thing. I think I called it touch and  
11:34:03 24 drag, and he pointed to the Apple that called it a swipe.  
11:34:06 25 So swiping or dragging or any sort of movement where you're



11:34:11 1 moving your finger, you have to touch the screen to move  
11:34:14 2 your finger. We're not waving our finger in the air.

11:34:18 3 So the first touch operation of touch and drag is  
11:34:19 4 still meeting the Court's construction and is still a first  
11:34:24 5 touch operation.

11:34:24 6 Q. Thank you.

11:34:25 7 MR. MOORE: Mr. Groat, could you please go to  
11:34:27 8 Slide 165 in this same presentation?

11:34:36 9 Q. (By Mr. Moore) All right. Now, the second piece of  
11:34:38 10 this Element b, what is the second piece that Dr. Zagal  
11:34:42 11 disputes in Brawl Stars?

11:34:45 12 A. Control the display to display a frame indicative of a  
11:34:50 13 shooting effective range in accordance with the position of  
11:34:52 14 the first touch operation.

11:34:53 15 MR. MOORE: Can we go to the next slide, please?

11:34:55 16 Q. (By Mr. Moore) Is this the Court's claim construction  
11:34:57 17 for the aspects of that phrase?

11:34:59 18 A. Yes.

11:35:00 19 Q. All right. Now, why does Dr. Zagal say that this isn't  
11:35:05 20 met?

11:35:06 21 A. So he -- when we go to, for example -- can we put up an  
11:35:12 22 image of the game? It makes it easier.

11:35:16 23 Q. Yes.

11:35:16 24 MR. MOORE: Could you please go to Dr. Akl's  
11:35:19 25 slides at No. 37? No, the slides for today, please, the

11:35:34 1 rebuttal slides. Thank you.

11:35:38 2 A. Yes.

11:35:39 3 Q. (By Mr. Moore) How does this help your illustrated  
11:35:42 4 testimony?

11:35:42 5 A. So the swipe operation, the direction and the shape  
11:35:50 6 where the position of the cone appears mirrors what I do  
11:35:54 7 with my thumb. So if I swipe in this direction, the cone  
11:36:01 8 appears in that direction. If I swipe in this direction,  
11:36:05 9 the cone would appear in that direction.

11:36:07 10 Q. All right. And do you recall we showed a slow-motion  
11:36:10 11 video during your original testimony that we illustrated  
11:36:13 12 that?

11:36:13 13 A. Yes.

11:36:13 14 Q. All right. Now -- so do the two reasons that Dr. Zagal  
11:36:21 15 identified get Supercell out of infringement of the '873?

11:36:25 16 A. No.

11:36:25 17 Q. And let's move on to invalidity then?

11:36:28 18 On the Call of Mini Sniper game, what -- what are  
11:36:32 19 they -- what's the first claim element that is not present  
11:36:35 20 in that?

11:36:36 21 A. Element 8b and 10b of the '873 patent.

11:36:40 22 Q. Why are those not present in Call of Mini Sniper?

11:36:45 23 A. There is no shooting effective range as defined by the  
11:36:47 24 Court.

11:36:47 25 Q. Why not?

11:36:48 1 A. Because to have a shooting effective range, you need to  
11:36:51 2 be able to hit anywhere in that region. And the game  
11:36:56 3 doesn't have that. You can only hit in the crosshair.

11:36:59 4 Q. Okay.

11:36:59 5 A. So the scope doesn't give you a region where you can  
11:37:02 6 hit. It just -- you can only hit in the crosshair.

11:37:06 7 MR. MOORE: Could you please pull up PTX-5, the  
11:37:10 8 '873 patent? And then go to I believe it's Figure 4.

11:37:14 9 Actually, just stay there. Just blow up the  
11:37:17 10 little crosshairs at the bottom right there, figure. Thank  
11:37:21 11 you.

11:37:21 12 Q. (By Mr. Moore) Do you recall that Dr. Zagal showed  
11:37:25 13 this figure from the patent of the crosshairs?

11:37:29 14 A. Yes.

11:37:30 15 Q. Now, again, do we compare a figure of the patent to the  
11:37:33 16 prior art or the claims?

11:37:34 17 A. The claims.

11:37:34 18 Q. And so does the fact that these prior art games might  
11:37:37 19 have also shown a crosshair and so does this '873 patent,  
11:37:41 20 does that mean that the patent is invalid?

11:37:42 21 A. No.

11:37:43 22 Q. Why not?

11:37:43 23 A. Because, again, the -- just the presence of the  
11:37:47 24 crosshair and the scope in the game isn't what's required  
11:37:50 25 in the claim. The claim requires that you need to have

11:37:53 1 a -- a range that you end up hitting. And in the game, you  
11:37:58 2 don't.

11:37:58 3 So the scope cannot meet the claim language  
11:38:02 4 because it does appear, but you don't end up hitting a  
11:38:05 5 target that appears anywhere in the scope. It has to be in  
11:38:07 6 the middle -- in the crosshair.

11:38:09 7 Q. In the prior art, you're saying?

11:38:11 8 A. In the prior art, yes, that's why the Call of Mini  
11:38:15 9 Sniper doesn't meet it.

11:38:18 10 Q. All right.

11:38:19 11 MR. MOORE: Please take that down and go to  
11:38:21 12 Slide 39 of the rebuttal presentation.

11:38:23 13 Q. (By Mr. Moore) Why is -- why in Call of Mini Sniper  
11:38:27 14 does the server not control to attack, as required by  
11:38:30 15 Element d?

11:38:31 16 A. Because there is no -- there is no sniper that controls  
11:38:36 17 the user in that game.

11:38:37 18 Q. No server --

11:38:38 19 A. Server, sorry, there's no server that controls the  
11:38:41 20 user.

11:38:41 21 Q. Right. It's not a connected game, correct?

11:38:43 22 A. Yes.

11:38:43 23 Q. Do you recall Dr. Zagal saying that you -- you could  
11:38:46 24 combine it with this Sakurai patent?

11:38:48 25 A. Yes.

11:38:48 1 Q. And is that patent on the face of the '873, meaning the  
11:38:52 2 patent examiner considered it already?

11:38:54 3 A. Yes.

11:38:54 4 Q. Now, lastly, Sniper vs. Sniper prior art, does this  
11:38:59 5 prior art game -- before we get to this element, does it  
11:39:03 6 have the shooting effective range element that you talked  
11:39:04 7 about before?

11:39:05 8 A. No.

11:39:05 9 Q. And is -- is that for the same reasons as Call of Mini?

11:39:08 10 A. Yes.

11:39:09 11 Q. All right. And why does the Sniper vs. Sniper prior  
11:39:12 12 art not use a server to control the attack?

11:39:16 13 A. Also, there is no -- there's no server that's being  
11:39:19 14 used to control the attack.

11:39:20 15 Q. And what did Dr. Zagal in his report say actually  
11:39:23 16 controls the attack?

11:39:24 17 A. He -- he admits that the phone -- he says: Sniper vs.  
11:39:29 18 Sniper discloses a device, like the phone controlling the  
11:39:32 19 attack.

11:39:32 20 Q. All right. And would it have been obvious to combine  
11:39:35 21 any of this prior art?

11:39:36 22 A. No, there is no motivation to combine.

11:39:39 23 Q. All right. For the same reason you described on the  
11:39:41 24 other patent?

11:39:42 25 A. Yes.

11:39:42 1 Q. Okay. Now, lastly, Dr. Akl, you heard some testimony  
11:39:46 2 yesterday and this morning about non-infringing  
11:39:49 3 alternatives?

11:39:49 4 A. Yes.

11:39:49 5 Q. Are there any non-infringing alternatives that are  
11:39:53 6 acceptable that the Defendants have identified?

11:39:55 7 A. No.

11:39:55 8 Q. And is that for all the reasons you testified last  
11:39:58 9 week?

11:39:58 10 A. Yes.

11:39:59 11 Q. Thank you.

11:40:01 12 MR. MOORE: I pass the witness, Your Honor.

11:40:02 13 THE COURT: Cross-examination by the Defendant?

11:40:05 14 MR. SACKSTEDER: Thank you, Your Honor.

11:40:16 15 THE COURT: Please proceed.

11:40:16 16 CROSS-EXAMINATION

11:40:17 17 BY MR. SACKSTEDER:

11:40:17 18 Q. Good morning, Dr. Akl.

11:40:19 19 A. Good morning.

11:40:20 20 Q. You just showed a slide with Dr. Zagal's face on it,  
11:40:25 21 correct?

11:40:25 22 A. Yes.

11:40:27 23 MR. SACKSTEDER: Mr. Smith, can you pull up -- I  
11:40:29 24 think it's Slide 42 from Dr. Akl's slides?

11:40:34 25 Q. (By Mr. Sacksteder) And you have a highlighted quote

11:40:40 1 from Dr. Zagal's expert report, correct?

11:40:43 2 A. Yes.

11:40:43 3 Q. And you are talking about what it is that performs the  
11:40:46 4 control to attack claim limitation, correct?

11:40:48 5 A. Yes.

11:40:48 6 Q. And you are suggesting that because Sniper vs. Sniper  
11:40:53 7 discloses a smartphone means that it does not also have a  
11:40:58 8 server controlling to attack, correct?

11:41:00 9 A. Yes.

11:41:02 10 Q. You would agree that a client device executing code can  
11:41:06 11 still cause instructions to be executed on the server,  
11:41:10 12 correct?

11:41:10 13 A. Yes.

11:41:12 14 Q. In fact, you testified to that regarding your review of  
11:41:15 15 source code or not, earlier in the trial, correct?

11:41:17 16 A. Yes.

11:41:18 17 Q. And you would agree that in a client-server  
11:41:22 18 architecture, as a result of executing code on a client  
11:41:26 19 device, you end up with code executing on the server, as  
11:41:30 20 well, correct?

11:41:31 21 A. If that's how it's programmed.

11:41:35 22 Q. The portion of Dr. Zagal's expert report that you are  
11:41:42 23 relying on here is talking about Claim 1 of the '873  
11:41:49 24 patent, correct?

11:41:50 25 A. I would have to check. But I'll take your word for it.

11:41:54 1 Q. All right.

11:41:55 2 MR. SACKSTEDER: Can we go to Paragraph 939 of the  
11:41:58 3 expert report?

11:42:02 4 Q. (By Mr. Sacksteder) And it says: Element 1-D.  
11:42:06 5 Correct?

11:42:06 6 A. Yes.

11:42:06 7 Q. All right. So you're talking about a claim that isn't  
11:42:09 8 even asserted in this case, correct?

11:42:14 9 MR. MOORE: Your Honor, I would object as  
11:42:15 10 irrelevant to the extent we're getting into claims that are  
11:42:20 11 previously asserted and may not be at the moment.

11:42:21 12 MR. SACKSTEDER: It's in this witness's slides,  
11:42:23 13 Your Honor.

11:42:23 14 THE COURT: All right. I'll overrule it.

11:42:25 15 MR. MOORE: Thank you, Your Honor.

11:42:27 16 A. Can you repeat the question, please?

11:42:29 17 Q. (By Mr. Sacksteder) The heading on Paragraph 939 of  
11:42:34 18 Dr. Zagal's report upon which you just relied says:  
11:42:39 19 Element 1-D. Correct?

11:42:40 20 A. Yes.

11:42:40 21 Q. And that is referring to "Element 1-D" of Claim 1,  
11:42:44 22 correct?

11:42:44 23 A. Yes.

11:42:45 24 Q. Which is not asserted, correct?

11:42:46 25 A. Yes.



11:42:47 1 MR. SACKSTEDER: Can we go to Page 9 -- 349 of  
11:42:50 2 Dr. Zagal's report?

11:42:52 3 Q. (By Mr. Sacksteder) And at the bottom there, he's  
11:42:56 4 discussing Claim 8, correct -- Element 8d?

11:43:02 5 A. Yes.

11:43:03 6 MR. SACKSTEDER: Can we go to the paragraph right  
11:43:05 7 after that, which I think is Paragraph 962?

11:43:09 8 Q. (By Mr. Sacksteder) And, here, he says that an online  
11:43:13 9 server can control to attack. Correct?

11:43:16 10 A. He says it's possible.

11:43:17 11 Q. Yeah. It says: The online server may be configured to  
11:43:21 12 perform certain operations with a game, including  
11:43:25 13 controlling to attack?

11:43:26 14 Correct?

11:43:27 15 A. Yes.

11:43:27 16 Q. And you didn't show that part, correct?

11:43:30 17 A. Correct.

11:43:30 18 Q. You showed a part about a claim that is not asserted,  
11:43:33 19 correct?

11:43:33 20 A. Yes.

11:43:45 21 MR. SACKSTEDER: Your Honor, I am not going to  
11:43:47 22 show source code, but I'm going to discuss it a bit, and so  
11:43:50 23 I would like to seal, if we could.

11:43:53 24 THE COURT: All right. Based on counsel's request  
11:43:56 25 and to protect confidential information, I'll order the

11:44:00 1 courtroom sealed at this time.

11:44:01 2 Those present not subject to the protective order  
11:44:03 3 that's been entered by the Court in this case should excuse  
11:44:06 4 themselves and remain outside the courtroom until the  
11:44:11 5 courtroom is unsealed.

11:44:12 6 (Courtroom sealed.)

11:44:12 7 (This portion of the transcript is sealed  
11:44:12 8 and filed under separate cover as  
11:44:13 9 Sealed Portion No. 7.)

11:52:37 10 (Courtroom unsealed.)

11:52:38 11 A. I'm there.

11:52:42 12 Q. (By Mr. Sacksteder) All right. And do you see the  
11:52:44 13 part beginning at Line 4 and down to Line 13?

11:52:53 14 A. Yes.

11:52:53 15 Q. Do you see that you drew a distinction between  
11:52:56 16 selecting a card and deploying it?

11:53:01 17 A. Yes.

11:53:04 18 Q. I'll ask you again. Selecting and deploying are two  
11:53:10 19 different things, right?

11:53:12 20 A. Yes.

11:53:15 21 Q. And you relied on code for deploying, correct?

11:53:21 22 A. Yes.

11:53:27 23 MR. SACKSTEDER: Take a look at Slide 6 of  
11:53:29 24 Dr. Akl's slides.

11:53:58 25 Q. (By Mr. Sacksteder) While we're looking for that --

11:54:00 1 oh, here we go -- let's -- yeah, this is actually fine?

11:54:03 2 Let's talk about the -- Slide 37 of your slides,  
11:54:06 3 but it happens to be what I was also going to ask you  
11:54:09 4 about.

11:54:09 5 So you expressed some opinions about the '873  
11:54:13 6 patent this morning, correct?

11:54:14 7 A. Yes.

11:54:14 8 Q. And one of the things that you said was when you move  
11:54:17 9 your thumb in a particular direction, then the cone appears  
11:54:20 10 in that direction. Did I hear you right?

11:54:23 11 A. Yes.

11:54:23 12 Q. All right. And that was your sworn testimony, correct?

11:54:25 13 A. Yes.

11:54:26 14 Q. Thank you, sir.

11:54:28 15 MR. SACKSTEDER: I need Slide 6 of these slides.

11:54:36 16 Q. (By Mr. Sacksteder) All right. And this is where you  
11:54:37 17 were talking about the template related to the different  
11:54:40 18 player, correct?

11:54:41 19 A. Yes.

11:54:41 20 Q. All right. And -- and that is in the '594 patent,  
11:54:45 21 correct?

11:54:45 22 A. Yes.

11:54:45 23 Q. In the '594 patent, the only claim that is asserted in  
11:54:49 24 Claim 2, right?

11:54:50 25 A. Yes.

11:54:50 1 Q. And you agree with me that that relates -- or that is  
11:54:54 2 asserted against the copy layout feature, correct?

11:54:59 3 A. From a second player.

11:55:03 4 Q. Related to a second player is what the claim says,  
11:55:07 5 right?

11:55:07 6 A. Yes.

11:55:08 7 Q. And the feature that is accused of infringing that is  
11:55:11 8 the copy layout feature in Clash of Clans, right?

11:55:15 9 A. Yes.

11:55:16 10 Q. And you prepared in part of your analysis of this -- of  
11:55:21 11 this patent, you prepared a video where you went through  
11:55:26 12 the process of visiting another player's layout and making  
11:55:31 13 a copy of it and then dropping it into a slot of the layout  
11:55:37 14 editor. Correct?

11:55:37 15 A. Yes.

11:55:37 16 Q. And then you got sent to a place called village edit  
11:55:43 17 mode, right?

11:55:44 18 A. Yes.

11:55:44 19 Q. And there were a whole bunch of blue boxes. We looked  
11:55:47 20 at them a little bit before, at the bottom of the screen,  
11:55:50 21 right? And you couldn't go any further than that, and you  
11:55:53 22 could not set that layout as active because you hadn't  
11:55:57 23 gotten rid of those blue boxes by moving your buildings to  
11:56:01 24 the layout and dealing with the buildings you didn't have,  
11:56:04 25 correct?

11:56:04 1 A. Yes.

11:56:04 2 Q. All right. So in that video, you never actually set  
11:56:11 3 the layout as active, correct?

11:56:20 4 A. No.

11:56:22 5 Q. Meaning you -- are you saying you did set the layout as  
11:56:26 6 active?

11:56:27 7 A. No, I said I did not in that video. I did it in  
11:56:30 8 another video.

11:56:31 9 Q. Sometimes when I -- you did it in another, video but  
11:56:35 10 you were talking about a layout that you copied from  
11:56:37 11 yourself, right?

11:56:38 12 A. Yes. I was showing the functionality of how you can  
11:56:42 13 copy and you set as active, that is correct.

11:56:44 14 Q. But in that case, you were copying your own layout,  
11:56:47 15 correct?

11:56:47 16 A. Yes. The -- the original was mine. The steps are the  
11:56:51 17 same, regardless of where you get it from. So that was the  
11:56:55 18 point.

11:56:56 19 MR. SACKSTEDER: Move to strike everything after  
11:56:58 20 "yes" as non-responsive.

11:57:01 21 THE COURT: Sustained.

11:57:03 22 Q. (By Mr. Sacksteder) So the video showing you actually  
11:57:13 23 being able to set a layout as active was the video where  
11:57:18 24 you were copying your own layout, right?

11:57:21 25 A. Yes, for Claim 1.

11:57:22 1 Q. And Claim 1 is not asserted in this case?

11:57:24 2 A. Correct.

11:57:25 3 Q. And then in the video where you were trying to show  
11:57:29 4 copying of a layout related to another player, you were  
11:57:34 5 unable to set that layout as active, correct?

11:57:41 6 A. I didn't do it. I wouldn't say I was unable. I could  
11:57:50 7 have, but I didn't.

11:57:51 8 Q. You could have done it, but only if you had moved your  
11:57:54 9 existing buildings to places in the layout, correct?

11:57:58 10 A. Yes.

11:57:58 11 Q. And in your deposition, you said if you did that to  
11:58:00 12 somebody else's layout, then that would no longer be a  
11:58:04 13 layout related to another player, correct?

11:58:10 14 A. If I modify it further, it becomes my own.

11:58:17 15 Q. Right. Rather than a layout related to another player?

11:58:20 16 A. Yes.

11:58:20 17 Q. And you swore that in your deposition, correct?

11:58:22 18 A. Yes.

11:58:22 19 Q. So if you had set those buildings, it wouldn't have  
11:58:31 20 satisfied Claim 2, right?

11:58:36 21 A. I don't know.

11:58:38 22 Q. You don't have an opinion about that?

11:58:40 23 A. I don't know if we're arguing semantics. This is why I  
11:58:47 24 don't want to answer incorrectly.

11:58:49 25 Q. So the reason why -- well, strike that.

11:59:05 1 We're talking about setting the layout as active,  
11:59:08 2 right?

11:59:08 3 A. Sure.

11:59:08 4 Q. And that's the thing that you say is applying the  
11:59:12 5 template from the patent claim, right?

11:59:13 6 A. That's the command. I think it's from Claim 1 because  
11:59:20 7 Claim 2 depends on Claim 1. So we have to go back to  
11:59:23 8 Claim 1 even though Claim 1 is not asserted. I think the  
11:59:27 9 language is in Claim 1.

11:59:28 10 Q. You have to -- in order to apply the template in your  
11:59:31 11 theory, you have to set the layout as active in Clash of  
11:59:34 12 Clans, right?

11:59:34 13 A. Yes.

11:59:41 14 Q. In fact, you -- you spoke to Dr. Neal, the survey  
11:59:45 15 expert, right?

11:59:46 16 A. Yes.

11:59:46 17 Q. And you described what the accused feature in Clash of  
11:59:49 18 Clans was, right?

11:59:50 19 A. Yes.

11:59:50 20 Q. And what you said was, setting -- being able to save  
11:59:56 21 somebody else's layout, copy it, and set it as active as  
12:00:00 22 your own layout, correct?

12:00:01 23 A. Yes.

12:00:01 24 Q. And you can't do that unless you place all those  
12:00:04 25 buildings, right?

12:00:04 1 A. If you have an error message with the buildings, yes.

12:00:09 2 Q. And -- and when that happens, then if you do set the  
12:00:12 3 buildings, it is not a layout related to the other player,  
12:00:21 4 correct?

12:00:21 5 A. That's where I'm not sure if I can answer yes or no  
12:00:26 6 because of related can be -- you can still be related or  
12:00:33 7 cannot, depending on how we look at related.

12:00:33 8 Q. We discussed this in your deposition regarding  
12:00:35 9 invalidity, correct?

12:00:36 10 A. I -- I don't remember. We can go there if you want.  
12:00:39 11 It's been awhile.

12:00:40 12 Q. And -- and you said, I think we discussed this earlier  
12:00:42 13 in the week, too, you said that if it is -- if -- if you  
12:00:46 14 have to change it, it's not -- it's your own. You just  
12:00:49 15 said that, right?

12:00:51 16 A. It becomes your own if you do change it, but it comes  
12:00:55 17 from someone else's. So it is somewhat related. This is  
12:01:01 18 what I'm trying to answer on the record accurately.

12:01:03 19 Q. But you have not offered an opinion that if you change  
12:01:07 20 the buildings, it is related to another player, correct?

12:01:10 21 A. I'm not sure.

12:01:11 22 Q. You don't know one way or the other?

12:01:12 23 A. I'm not sure.

12:01:13 24 Q. Thank you, Dr. Akl.

12:01:16 25 MR. SACKSTEDER: I'll pass the witness.



12:01:18 1 THE COURT: Redirect, Mr. Moore?

12:01:20 2 MR. MOORE: Yes, Your Honor. Thank you.

12:01:29 3 THE COURT: By my calculations, you have seven  
12:01:31 4 minutes of trial time remaining.

12:01:33 5 MR. MOORE: Thank you, Your Honor.

12:01:34 6 THE COURT: Please proceed.

12:01:34 7 MR. MOORE: Thank you.

12:01:34 8 REDIRECT EXAMINATION

12:01:35 9 BY MR. MOORE:

12:01:35 10 Q. Dr. Akl, could you just please explain this last  
12:01:46 11 exchange that you and counsel for Defendant had?

12:01:48 12 A. Yes. So Claim 2, which is dependent from Claim 1,  
12:01:55 13 Claim 1 requires you to copy a layout, and you can set it  
12:02:00 14 as active. And I walked through all the elements of  
12:02:03 15 Claim 1 and did a video where I can copy my own layout, set  
12:02:09 16 it as active, and that's perfectly good.

12:02:12 17 For Claim 2, you have the additional limitation  
12:02:14 18 that you have to go and get another player's template. And  
12:02:18 19 so I've shown in the video that feature where I can go and  
12:02:21 20 get another player's template, and you get it back.

12:02:24 21 Once you get that template, you are in the  
12:02:28 22 template editor. And then I can do exactly what I did for  
12:02:32 23 Claim 1. I can set it as active, I can make a copy of it,  
12:02:36 24 I can move things around.

12:02:38 25 And my understanding is, I've already shown those

12:02:40 1 features. So I don't necessarily need to show them again  
12:02:43 2 for Claim 2. Because Claim 2 deals with the second player,  
12:02:46 3 there may be buildings that you have to deal with. There  
12:02:49 4 may not be. They may be a lower level than me and have the  
12:02:53 5 same buildings.

12:02:54 6 So the issue with the buildings doesn't really  
12:02:57 7 relate to the claim. And this is why I felt we were  
12:03:00 8 arguing semantics, and I didn't want to answer incorrectly  
12:03:03 9 on the record.

12:03:04 10 So I don't have an opinion about the semantic  
12:03:07 11 aspect, but I have no -- no -- I'm trying to think of the  
12:03:17 12 word -- there is no -- in my mind, there is no dispute that  
12:03:23 13 the game infringes, and I've shown how it infringes when I  
12:03:26 14 look at Claim 1 and Claim 2.

12:03:27 15 Q. And does the fact that sometimes you may have to deal  
12:03:30 16 with buildings that are in -- in your inventory get  
12:03:35 17 Supercell out of infringement?

12:03:36 18 A. No. And so then after you did that, if it's still --  
12:03:40 19 you can then call it your own --

12:03:42 20 THE COURT: Slow -- slow down, Dr. Akl.

12:03:44 21 THE WITNESS: Sorry.

12:03:45 22 A. It's because someone copied someone's homework and then  
12:03:48 23 changed something. This is where it's still copied, but  
12:03:52 24 you've changed something. So how much do you penalize  
12:03:54 25 them? That was the semantic question I wasn't comfortable

12:03:58 1 answering on the fly.

12:03:59 2 Q. (By Mr. Moore) Okay. Now, you also discussed Page 242  
12:04:02 3 of your deposition about this select and deploy exchange  
12:04:05 4 that you had?

12:04:05 5 Could you please explain that interchange that you  
12:04:09 6 had, as well?

12:04:09 7 A. Yes. The reason I was a little reluctant to answer is  
12:04:14 8 because the claim requires you to select to attack. And  
12:04:18 9 the "to attack" in the game is the deploying.

12:04:24 10 So when I say selecting, I am not using it in the  
12:04:27 11 claim term where you're just selecting. Because I can grab  
12:04:31 12 something and I can move it, and then once I deploy, those  
12:04:35 13 steps of grabbing, moving, and deploying, is the select to  
12:04:39 14 attack that the claim requires.

12:04:41 15 So, again, I was -- I wasn't sure what the  
12:04:45 16 semantics. Are we talking about just selecting in vacuum  
12:04:49 17 or the select to attack, which I've shown correctly is the  
12:04:53 18 deploy?

12:04:53 19 Q. So is this just another semantical issue?

12:04:57 20 A. Yes, and I may be overthinking the questions.

12:05:01 21 MR. MOORE: Okay. Pass the witness, Your Honor.  
12:05:02 22 Thank you.

12:05:07 23 THE COURT: Any additional cross, Mr. Sacksteder  
12:05:10 24 in your remaining three minutes?

12:05:12 25 MR. SACKSTEDER: Thank you, Your Honor. Extremely

12:05:17 1 briefly.

12:05:17 2 RECROSS-EXAMINATION

12:05:18 3 BY MR. SACKSTEDER:

12:05:18 4 Q. The way we discussed selection today, or the way you  
12:05:21 5 did, that includes subtraction; do you agree with that?

12:05:29 6 A. In what context?

12:05:31 7 Q. Well, the way you discussed it and the way you  
12:05:33 8 discussed it in your -- your deposition, does it include  
12:05:36 9 subtraction?

12:05:37 10 A. I still don't understand the question.

12:05:43 11 Q. Is subtraction part of the selection process?

12:05:45 12 A. No.

12:05:46 13 Q. Thank you, sir.

12:05:50 14 MR. SACKSTEDER: No more questions, Your Honor.

12:05:52 15 THE COURT: Any redirect, additionally?

12:05:57 16 MR. MOORE: Nothing further, Your Honor. Thank  
12:05:59 17 you.

12:05:59 18 THE COURT: Dr. Akl, you may step down, sir.

12:06:01 19 THE WITNESS: Thank you, Your Honor.

12:06:04 20 MR. MOORE: And, Your Honor, may Dr. Akl be  
12:06:06 21 excused?

12:06:06 22 THE COURT: Any objection?

12:06:08 23 MR. DACUS: No objection, Your Honor.

12:06:09 24 THE COURT: The witness may be excused.

12:06:11 25 MR. MOORE: Thank you.

12:06:12 1 THE WITNESS: Thank you.

12:06:12 2 THE COURT: Plaintiff, call your next rebuttal  
12:06:17 3 witness.

12:06:17 4 MR. MOORE: Your Honor, the Plaintiff rests its  
12:06:19 5 case.

12:06:19 6 THE COURT: All right. Both Plaintiff and  
12:06:22 7 Defendant rest and close, subject to final jury  
12:06:25 8 instructions and closing arguments?

12:06:28 9 MR. MOORE: Yes, sir.

12:06:29 10 MR. DACUS: Yes, Your Honor, Supercell rests and  
12:06:30 11 closes.

12:06:31 12 THE COURT: All right. Ladies and gentlemen of  
12:06:34 13 the jury, you have now heard all the evidence in this case.  
12:06:41 14 There are things that the rules of the Court require me to  
12:06:45 15 take up with counsel that do not require your presence at  
12:06:49 16 this point. And that means I have good news for you. You  
12:06:54 17 get the afternoon off.

12:06:57 18 I'm told by the clerk that your boxed lunches are  
12:07:00 19 in the jury room if you want them. You may go in there and  
12:07:05 20 eat them, you may go through there and pick them up, you  
12:07:07 21 may walk out and ignore them. It is strictly up to you,  
12:07:11 22 but they're there.

12:07:13 23 I expect that I will spend probably until early  
12:07:16 24 evening with the lawyers working through all the procedural  
12:07:23 25 things that we need to get done, but we will do that no

12:07:26 1 matter how long it takes. Because it is my intention that  
12:07:30 2 when you return tomorrow -- and I will want you back ready  
12:07:33 3 to go at 8:30 in the morning, to be consistent -- it's my  
12:07:37 4 intention when you return tomorrow, that we will begin with  
12:07:42 5 my final instructions to the jury.

12:07:44 6 As I told you, it's sometimes called the Court's  
12:07:47 7 charge to the jury. And that will be followed by closing  
12:07:50 8 arguments by Plaintiff and Defendant.

12:07:53 9 Then after those closing arguments are presented,  
12:07:56 10 I will instruct you to retire to the jury room and to  
12:07:59 11 deliberate on your verdict.

12:07:59 12 So we are getting close to the end of the process.  
12:08:04 13 Please, ladies and gentlemen, remember and follow all the  
12:08:08 14 instructions I've given you about your conduct during the  
12:08:11 15 trial, including, among all those instructions, not to  
12:08:16 16 discuss this case or communicate about it in any way with  
12:08:20 17 anyone, including the eight of you.

12:08:22 18 Please enjoy your afternoon, and we will see you  
12:08:24 19 in the morning at 8:30.

12:08:25 20 At this time and with those instructions, the jury  
12:08:28 21 is excused for the day.

12:08:30 22 COURT SECURITY OFFICER: All rise.

12:08:31 23 (Jury out.)

12:08:31 24 THE COURT: Please be seated.

12:09:01 25 Just by way of information, Plaintiff had 3

12:09:15 1 minutes remaining on their trial time, and Defendant had 3  
12:09:18 2 minutes remaining on their trial time.

12:09:22 3 I'm going to break for recess, counsel -- excuse  
12:09:27 4 me, I'm going to break for lunch. It's 9 minutes after  
12:09:29 5 12:00. We're going to reconvene at 1:30. At 1:30, we'll  
12:09:34 6 take up motions under Rule 50(a) that either Plaintiff or  
12:09:39 7 Defendant care to offer.

12:09:44 8 After the Court has heard and ruled on any motions  
12:09:47 9 offered under Rule 50(a), then the Court will conduct an  
12:09:52 10 informal charge conference in chambers with counsel from  
12:09:55 11 both sides participating where I can receive full and  
12:09:59 12 informal input from the competing parties through their  
12:10:03 13 counsel as to any areas in their proposed final jury  
12:10:08 14 instructions and verdict where they're not in agreement.

12:10:11 15 After I've received the benefit of that fulsome  
12:10:16 16 input, I'll consider the same, and I will generate what I  
12:10:19 17 believe to be the appropriate charge to the jury and  
12:10:22 18 verdict form, and I'll give you a copy of it.

12:10:24 19 I'll give you an opportunity to review it. And  
12:10:27 20 then I'll conduct a formal charge conference on the record  
12:10:32 21 where each side can offer any resulting objections that  
12:10:37 22 they feel the interest of their client require them to  
12:10:40 23 make.

12:10:42 24 After I've heard and ruled on all formal  
12:10:46 25 objections to the charge and the verdict on the record as a

12:10:49 1 part of that formal charge conference, then, in all  
12:10:51 2 likelihood, we will recess until tomorrow morning at that  
12:10:56 3 point.

12:10:56 4 It is my practice and it is my intention to give  
12:10:59 5 to the jury when they retire eight clean, separate, printed  
12:11:05 6 copies of the charge so that they will each have their own  
12:11:08 7 copy to review; and they will not feel compelled to take  
12:11:12 8 notes during the time I'm orally instructing them on the  
12:11:16 9 charge.

12:11:18 10 I'll also send back one clean copy of the verdict  
12:11:21 11 form for their use while they deliberate.

12:11:24 12 As I indicated yesterday, those of you involved in  
12:11:28 13 presenting closing arguments are not required to be present  
12:11:31 14 for the remainder of today unless you choose to, as long as  
12:11:35 15 each side adequately staffs through their various counsel  
12:11:40 16 these intermediate steps that I've just outlined.

12:11:45 17 Are there questions from either party?

12:11:48 18 MR. MOORE: No, Your Honor. Thank you.

12:11:50 19 MR. DACUS: No, Your Honor. Thank you.

12:11:52 20 THE COURT: And let me say this: At this juncture  
12:11:55 21 in many trials, I often get counsel before me under -- when  
12:12:00 22 motions are raised under Rule 50(a) who have not been  
12:12:04 23 actively involved in the presentation of the evidence. I  
12:12:07 24 certainly want to hear your motions, and I certainly want  
12:12:09 25 to hear a succinct recital of the bases why you believe



12:12:14 1 those motions are proper.

12:12:16 2 I do not want a 15-page motion read into the  
12:12:19 3 record by an associate who stayed up all night working on  
12:12:23 4 it. Can I make that clear?

12:12:25 5 MR. DACUS: May I --

12:12:27 6 THE COURT: Mr. Dacus?

12:12:28 7 MR. DACUS: -- may I ask for some clarification in  
12:12:29 8 that regard, Your Honor? If we file something -- a written  
12:12:33 9 50(a) motion before submission to the jury --

12:12:35 10 THE COURT: If you file -- if you file it before I  
12:12:37 11 take them up at 1:30, I will certainly look at it.

12:12:40 12 MR. DACUS: And I guess my question is a little  
12:12:42 13 bit different. If we file our 50(a) written motion before  
12:12:46 14 the Court submits the case to the jury tomorrow, does the  
12:12:50 15 Court consider that 50(a) timely? I'm -- and let me get --  
12:12:54 16 let me --

12:12:54 17 THE COURT: I don't intend to reopen motions on  
12:12:58 18 Rule 50(a) once I've heard argument and ruled on them from  
12:13:01 19 the bench.

12:13:02 20 MR. DACUS: Understood.

12:13:02 21 And I'm addressing the Court's request to us to be  
12:13:05 22 succinct in our oral delivery. And I guess what I'm  
12:13:09 23 asking -- or attempting to ask -- is, can we file a more  
12:13:12 24 fulsome 50(a)?

12:13:15 25 THE COURT: You can and you could have at any

12:13:18 1 time, and I will certainly look at whatever has been filed.  
12:13:23 2 But we have one time set to hear arguments, presentations,  
12:13:27 3 and for the Court to rule.

12:13:29 4 And after I've ruled on motions under Rule 50(a),  
12:13:33 5 whether you have presented everything in writing that you  
12:13:38 6 might in a perfect world wish to or not, I'm not going to  
12:13:42 7 reopen the issue of Rule 50(a) motions.

12:13:45 8 MR. DACUS: Understood, Your Honor. And we will  
12:13:47 9 endeavor to file that immediately.

12:13:49 10 THE COURT: All right.

12:13:50 11 MR. DACUS: Thank you.

12:13:50 12 THE COURT: Any other questions?

12:13:52 13 Then those of you participating in everything I've  
12:13:55 14 outlined, except closing arguments for tomorrow, I will see  
12:13:58 15 you at 1:30.

12:13:59 16 Everyone else presenting closing arguments  
12:14:02 17 tomorrow, I assume I will see you in the morning.

12:14:04 18 With that, the Court stands in recess.

12:14:06 19 COURT SECURITY OFFICER: All rise.

12:14:11 20 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes  
SHELLY HOLMES, CSR, TCRR  
OFFICIAL REPORTER  
State of Texas No.: 7804  
Expiration Date: 12/31/20

9/16/2020  
Date